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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

A N A C T

RELATING TO FINANCIAL INSTITUTIONS

Introduced By: Senators Bates, Blais, and Walaska

Date Introduced: February 25, 2009

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 19-14-1, 19-14-3, 19-14-7, 19-14-9, 19-14-22 and 19-14-23 of the
2 General Laws in Chapter 19-14 entitled "Licensed Activities" are hereby amended to read as
3 follows:

4 **19-14-1. Definitions.** -- ~~For purposes of this chapter and~~ Unless otherwise specified, the
5 following terms shall have the following meanings throughout chapters 14.1, 14.2, 14.3, 14.4,
6 14.6, 14.8 and 14.10 ~~and 14.7~~ of this title:

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

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

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

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

1 instrument evidencing the loan;

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

3 (A) The loan is secured by real property located in this state;

4 (B) An application for a loan is taken by an employee, agent, or representative of the
5 lender within this state;

6 (C) The loan closes within this state;

7 (D) The loan solicitation is done by an individual with a physical presence in this state;

8 or

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

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

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

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

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

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

25 (5) "Licensee" means ~~an~~ any person ~~entity~~ licensed under this chapter;

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

27 (i) Loans secured by mortgages;

28 (ii) Insurance premium finance agreements;

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

31 (iv) Educational loans;

32 (v) Any other advance of money; or

33 (vi) Any transaction such as those commonly known as "pay day loans," "pay day
34 advances," or "deferred presentment loans," in which a cash advance is made to a customer in

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

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

10 (i) The loan is secured by real property located in this state;

11 (ii) An application for a loan is taken or received by an employee, agent or representative
12 of the loan broker within this state;

13 (iii) The loan closes within this state;

14 (iv) The loan solicitation is done by an individual with a physical presence in this state;

15 or

16 (v) The loan broker maintains an office in this state.

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

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

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

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

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

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

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

34 (15) "Check casher" means a person or entity that, for compensation, engages, in whole

1 or in part, in the business of cashing checks;

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

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

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

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

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

23 (21) "Mortgage loan originator" ~~means a natural person employee of a lender or loan~~
24 ~~broker that is required to be licensed under Rhode Island general laws section 19-14-1 et seq., or~~
25 ~~a provisional employee as defined herein, and who for or with the expectation of a fee,~~
26 ~~commission or other valuable consideration (i) advises an applicant about different loan products~~
27 ~~and their terms and conditions in order to permit the applicant to select and apply for a particular~~
28 ~~loan product, or (ii) advises persons in completing loan applications by informing the applicant~~
29 ~~regarding the benefits, terms and/or conditions of a loan product or service, or (iii) negotiates or~~
30 ~~offers to negotiate the making of a loan with an applicant. A person whose activities are~~
31 ~~ministerial and clerical is not acting as a mortgage loan originator~~ has the same meaning set forth
32 in subdivision 19-14.10-3(6);

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

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

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

18 (A) ~~The providing of title services, including title searches, title examinations, abstract~~
19 ~~preparation, insurability determinations, and the issuance of title commitments and title insurance~~
20 ~~policies, loan closings, preparation of loan closing documents when performed by or under the~~
21 ~~supervision of a licensed attorney, licensed title agency or licensed title insurance company;~~
22 Providing loan closing services;

23 (B) Rendering of credit reports by an authorized credit reporting agency; and
24 (C) Rendering of appraisal services.

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

31 (26) ~~"Negotiate a loan"~~ Negotiates shall mean, with respect to a loan, to confer directly
32 with or offer advice directly to a loan applicant or prospective loan applicant for a loan product or
33 service concerning any of the substantive benefits, terms, or conditions of the loan product or
34 service;

1 (27) "Natural person employee" shall mean any natural person performing services as a
2 bona-fide employee for a person licensed under the provisions of Rhode Island general laws
3 section 19-14-1, et. seq., in return for a salary, wage, or other consideration, where such salary,
4 wage, or consideration is reported by the licensee on a federal form W-2 payroll record. The term
5 does not include any natural person or business entity performing services for a person licensed
6 under the provisions of Rhode Island general laws in return for a salary, wage, or other
7 consideration, where such salary, wage, or consideration is reported by the licensee on a federal
8 form 1099;

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

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

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

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

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

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

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

33 (32) ~~Effective December 31, 2008; see contingent effective date note.~~ "Multi-state
34 licensing system" means a system involving one or more states, the District of Columbia, or the

1 Commonwealth of Puerto Rico established to facilitate the sharing of regulatory information and
2 the licensing, application, reporting and payment processes, by electronic or other means, for
3 mortgage lenders and loan brokers, and other licensees required to be licensed under this chapter.

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

7 (34) "Loan closing services" means providing title services, including title searches, title
8 examinations, abstract preparation, insurability determinations, and the issuance of title
9 commitments and title insurance policies, conducting loan closings, and preparation of loan
10 closing documents when performed by or under the supervision of a licensed attorney, licensed
11 title agency, of licensed title insurance company.

12 **19-14-3. Application for license. [Effective December 31, 2008.] Application for**

13 **license.** -- (a) The application for a license shall be in the form prescribed by the director and
14 shall contain the name and address or addresses where the business of the applicant is located and
15 if the applicant is a partnership, association, corporation or other form of business organization,
16 the names and addresses of each member, director and principal officer thereof or any individual
17 acting in the capacity of the manager of an office location. Such application shall also include a
18 description of the activities of the applicant, in such detail and for such periods as the director
19 may require, as well as such further information as the director may require. The director may
20 require a background investigation of each applicant for a license by means of fingerprint checks
21 pursuant to Rhode Island general laws sections 19-14-7 and 42-14-14, utilizing the federal bureau
22 of investigation, or other agency as determined by the director for state and national criminal
23 history record checks. If the applicant is a partnership, association, corporation or other form of
24 business organization, the director may require a background investigation by means of
25 fingerprint checks on each member, director or principal officer of such applicant or any
26 individual acting in the capacity of the manager of an office location. The director will determine
27 by rule those items of information appearing on a criminal records check that will constitute
28 disqualifying information and therefore render the applicant ineligible for licensing under this
29 chapter in accordance with the provisions of section 19-14-7. Receipt of criminal history record
30 information by a private entity is prohibited. Each application for a license shall be accompanied
31 by an investigation fee. The applicant at the time of making application shall pay to the director
32 or the director's designee the sum of one half (1/2) of the annual license fee as a fee for
33 investigating the application. If the application for license is approved, the applicant shall pay a
34 fee equal to the annual license fee as provided in this chapter. The license shall be continuous and

1 the license fee shall cover the period through December 31 of each year. ~~Any~~ The annual license
2 fee for any application approved after ~~October~~ November 1 of any given year shall satisfy the
3 annual license fee requirement through the end of the next succeeding calendar year ending
4 December 31. ~~pay one half (1/2) of the annual license fee for the period ending December 31 of~~
5 ~~that year as well as a full annual license fee for the succeeding calendar year ending December~~
6 ~~31st.~~ The director or the director's designee is authorized to participate in a multi-state licensing
7 system for licensees. The director may establish requirements for participation by an applicant for
8 a license or a person licensed under this chapter. Any such requirements that may be established
9 by the director shall be published on the website of the department of business regulation. Upon
10 implementation, participation by an applicant for a license or by a person licensed under the
11 provisions of this chapter shall be mandatory. The applicant may be required to an additional fee
12 for a license or other participation in such multi-state licensing system.

13 (b) [Reserved].

14 (c) [Reserved].

15 (d) Any license issued under the provisions of former section 5-66-2 shall remain in full
16 force and effect until its expiration and shall be subject to the provisions of this chapter.

17 (e) An applicant for issuance of a mortgage loan originator license shall file with the
18 director or the director's designee evidence acceptable to the director or the director's designee
19 that said applicant has complied with the provisions of sections 19-14.10-5, 19-14.10-7 and 19-
20 14.10-8.

21 ~~-(1) Successfully completed, during the two (2) years immediately preceding the date of~~
22 ~~application, an entry level training course relative to state and federal statutes, rules and~~
23 ~~regulations applicable to loans, mortgages, real property, deeds and contracts consisting of a~~
24 ~~minimum of twenty four (24) hours with an approved nationally recognized training facility or~~
25 ~~other facility including in-house programs, as determined by the director or the director's~~
26 ~~designee; or~~

27 ~~-(2) If the applicant has been employed as a mortgage loan originator for five (5) or more~~
28 ~~years as of January 1, 2009 in this state, the applicant must file with the director or the director's~~
29 ~~designee that applicant has completed a minimum of twelve (12) hours of education relative to~~
30 ~~state and federal statutes, rules and regulations applicable to loans, mortgages, real property,~~
31 ~~deeds and contracts during the two (2) years immediately preceding January 1, 2009, by an~~
32 ~~approved nationally recognized training facility or other facility including in-house programs, as~~
33 ~~determined by the director or the director's designee; or~~

34 ~~-(3) If the applicant has been employed as a loan officer of a financial institution, credit~~

1 ~~union, bank organized under the laws of another state or bank organized under the laws of the~~
2 ~~United States for between one and five (5) years immediately preceding applicant's employment~~
3 ~~as a mortgage loan originator, applicant shall file an application for a mortgage loan originator~~
4 ~~license on or before his or her date of employment as a mortgage loan originator and shall file~~
5 ~~evidence acceptable to the director or the director's designee that applicant has completed a~~
6 ~~minimum of twenty four (24) hours of education relative to state and federal statutes, rules and~~
7 ~~regulations applicable to loans, mortgages, real property, deeds and contracts within one hundred~~
8 ~~twenty (120) days of his or her employment as a mortgage loan originator by an approved~~
9 ~~nationally recognized training facility or other facility including in-house programs, as~~
10 ~~determined by the director or the director's designee; or~~

11 ~~-(4) If the applicant has been employed as a loan officer of a financial institution, credit~~
12 ~~union, bank organized under the laws of another state or bank organized under the laws of the~~
13 ~~United States for five (5) years immediately preceding applicant's employment as a mortgage~~
14 ~~loan originator, applicant shall file an application for a mortgage loan originator license on or~~
15 ~~before his or her date of employment as a mortgage loan originator and shall file evidence~~
16 ~~acceptable to the director or the director's designee that applicant has completed a minimum of~~
17 ~~twelve (12) hours of education relative to state and federal statutes, rules and regulations~~
18 ~~applicable to loans, mortgages, real property, deeds and contracts within twelve (12) months of~~
19 ~~his or her employment as a mortgage loan originator by an approved nationally recognized~~
20 ~~training facility or other facility including in-house programs, as determined by the director or the~~
21 ~~director's designee; or~~

22 ~~-(5) The requirements that mortgage loan originators obtain licenses as set forth by~~
23 ~~section 19-14-2 shall be effective January 1, 2009 however, all mortgage loan originators shall~~
24 ~~register with the department by March 31, 2008 on a form to be prescribed by the director or the~~
25 ~~director's designee along with a registration fee of the same amount as provided for in section 19-~~
26 ~~14-4(8).~~

27 ~~-(f) The application for a lender, or loan broker license shall include an application for a~~
28 ~~license for each mortgage loan originator of the applicant.~~

29 **19-14-7. Issuance or denial of license.** -- (a) Upon the filing of a completed application,
30 the payment of fees and the approval of the bond, the director or the director's designee shall
31 commence an investigation of the applicant. The director or the director's designee shall ~~issue and~~
32 ~~deliver~~ approve the license applied for in accordance with the provisions of this chapter ~~at the~~
33 ~~location specified in the application~~ if he or she shall find:

34 (1) That the financial responsibility, experience, character, and general fitness of the

1 applicant, and of the applicant's members and of the applicant's officers, including the designated
2 manager of record of a licensed location, if the applicant is a partnership, limited liability
3 company or association, or of the officers including the designated manager of record of a
4 licensed location, and directors and the principal owner or owners of the issued and outstanding
5 capital stock, if the applicant is a corporation, are such as to command the confidence of the
6 community and to warrant belief that the business will be operated honestly, fairly, and efficiently
7 within the purposes of this title; and

8 (2) That allowing the applicant to engage in business will promote the convenience and
9 advantage of the community in which the business of the applicant is to be conducted.

10 (b) A license provided pursuant to this title shall remain in full force and effect until it is
11 surrendered by the licensee or revoked or suspended as provided by law.

12 (c) If the director or the director's designee rejects an application for a license, he or she
13 shall notify the applicant, by certified mail, of the denial, the reason(s) supporting the denial and
14 shall afford the applicant the opportunity for a hearing within a reasonable time period to show
15 cause why the license should not be denied. When an application for a license is denied by the
16 director or the director's designee or withdrawn by the applicant, the director or the director's
17 designee shall return to the applicant the bond, but shall retain the investigation fee to cover the
18 costs of investigating the application. The director or the director's designee shall approve or deny
19 every application for license under this section within sixty (60) days from the date the
20 application is deemed by the director or the director's designee to be completed. Upon written
21 request of the applicant, the director or the director's designee shall advise the applicant whether
22 the applicant's application for any such license is complete and if not, the reason why such
23 application is not complete.

24 (d) Any applicant or licensee aggrieved by the action of the director or the director's
25 designee in denying a completed application for a license shall have the right to appeal the action,
26 order, or decision pursuant to chapter 35 of title 42.

27 **19-14-9. Contents of license -- Posting. --** The license or branch certificate shall contain
28 any information that the director or the director's designee shall require, including the type of
29 activity authorized. ~~The~~ With the exception of licensed mortgage loan originators, the license or
30 branch certificate shall be kept conspicuously posted in the place of business of the licensee. ~~The~~
31 ~~mortgage loan originator license must be carried by each mortgage loan originator and presented,~~
32 ~~upon request to each applicant or potential applicant with whom the mortgage loan originator~~
33 ~~transacts business in an in-person meeting.~~ When dealing with an applicant or potential applicant
34 for a mortgage loan or when dealing with any person providing settlement services (as defined in

1 the Real Estate Settlement Procedures Act, as amended, or the regulations promulgated
2 thereunder from time to time). ~~other than in an in-person meeting,~~ the a mortgage loan originator
3 shall disclose the mortgage loan originator's nationwide mortgage licensing system unique
4 identification number ~~license number~~, upon request to the applicant or potential applicant and the
5 fact that the mortgage loan originator is licensed by this state. Any licensee who shall lose,
6 misplace or mutilate the license or branch certificate shall pay a replacement fee of one hundred
7 dollars (\$100) to the director for the use of the state.

8 **19-14-22. Reporting requirements.** -- (a) Each licensee shall annually on or before
9 March 31 file a report with the director or the director's designee giving any relevant information
10 that the director or the director's designee may reasonably require concerning the business and
11 operations during the preceding calendar year of each licensed place of business conducted by the
12 licensee within the state. The report shall be made under oath and shall be in a form prescribed by
13 the director or the director's designee. At the time of filing each report, the sum of fifty-five
14 dollars (\$55.00) per license and fifty-five dollars (\$55.00) per branch certificate shall be paid by
15 the licensee to the director for the use of the state. Any licensee who shall delay transmission of
16 any report required by the provisions of this title beyond the limit, unless additional time is
17 granted, in writing, for good cause, by the director or the director's designee, shall pay a penalty
18 of twenty-five dollars (\$25) for each day of the delay. In lieu of a report by any licensed mortgage
19 loan originator, the director or the director's designee may accept a report by the licensed lender
20 or licensed loan broker who employed the licensed mortgage loan originator for the activities of
21 the licensed mortgage loan originator while employed by such lender or loan broker during the
22 applicable calendar year.

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

29 (c) Each mortgage loan originator licensee shall, on or before March 31, 2010 and every
30 March 31st thereafter, file with the director or the director's designee evidence acceptable to the
31 director or the director's designee that said loan originator licensee has filed with the nationwide
32 mortgage licensing system and registry a report of condition, which shall be in such form and
33 shall contain such information as the nationwide mortgage licensing system and registry may
34 require along with evidence that the licensee ~~has successfully completed~~, during the twelve (12)

1 months immediately preceding March 31, satisfied the requirements of section 19-14.10-10 with
2 respect to continuing education ~~a minimum of eight (8) hours of continuing education relative to~~
3 ~~state and federal statutes, rules and regulations applicable to loans, mortgages, real property,~~
4 ~~deeds and contracts provided by an approved nationally recognized training facility or other~~
5 ~~facility including in-house programs, as determined by the director or the director's designee~~

6 (d) Both the mortgage loan originator and his or her ~~the licensee~~ licensed employer shall
7 promptly notify the director or the director's designee, in writing, within fifteen (15) business
8 days of the termination of employment or services of a mortgage loan originator.

9 **19-14-23. Examinations and investigations.** -- (a) For the purpose of discovering
10 violations of this title or securing information lawfully required, the director or the director's
11 designee(s) may at any time investigate the loans and business and examine the books, accounts,
12 records and files used therein, of every licensee and person who shall be engaged in any activity
13 that requires a license under this title, ~~the business,~~ whether the person shall act or claim to act as
14 principal or agent, or under or without the authority of this title. For that purpose the director or
15 the director's designee(s) shall have free access to the offices and places of business, books,
16 accounts, paper, records, files, and safes, of all such persons. The director or the director's
17 designee(s) shall have authority to require the attendance of and to examine under oath any
18 person whose testimony may be required relative to the loans or the business or to the subject
19 matter of any examination, investigation, or hearing.

20 (b) The director or the director's designee shall make an examination of the affairs,
21 business, office, and records of each licensee and branch location at least once every eighteen
22 (18) months. The director or the director's designee may accept in lieu of an examination of the
23 business of a licensed mortgage loan originator, the examination by the director or the director's
24 designee of the licensed lender(s) or licensed loan broker who employ the licensed mortgage loan
25 originator and/or who employed the licensed mortgage loan originator during the period under
26 examination. The total cost of an examination made pursuant to this section shall be paid by the
27 licensee or person being examined, and shall include the following expenses:

28 (1) One hundred fifty percent (150%) of the total salaries and benefits plus one hundred
29 percent (100%) for the travel and transportation expenses for the examining personnel engaged in
30 the examinations. The cost of an examination of a mortgage loan originator licensee shall be
31 limited to twenty-five percent (25%) of the total salary and benefits for the personnel engaged in
32 an examination specific to a mortgage loan originator. The fees shall be paid to the director to and
33 for the use of the state. The examination fees shall be in addition to any taxes and fees otherwise
34 payable to the state;

1 (2) All reasonable technology costs related to the examination process. Technology costs
2 shall include the actual cost of software and hardware utilized in the examination process and the
3 cost of training examination personnel in the proper use of the software or hardware; and

4 (3) All necessary and reasonable education and training costs incurred by the state to
5 maintain the proficiency and competence of the examination personnel. All such costs shall be
6 incurred in accordance with appropriate state of Rhode Island regulations, guidelines and
7 procedures.

8 (c) All expenses incurred pursuant to subsections (b)(2) and (b)(3) of this section shall be
9 allocated equally to each licensee, other than licensed mortgage loan originators, no more
10 frequently than annually and shall not exceed an annual average assessment of fifty dollars
11 (\$50.00) per company for any given three (3) calendar year period. All revenues collected
12 pursuant to this section shall be deposited as general revenues. That assessment shall be in
13 addition to any taxes and fees otherwise payable to the state.

14 (d) The provisions of section 19-4-3 shall apply to records of examinations or
15 investigations of licensees; however, the director or the director's designee is authorized to make
16 public the number of valid consumer complaints as determined by the director or the director's
17 designee filed against the licensee for a twelve (12) month period immediately preceding the
18 request for the information.

19 (e) If the director or his or her designee has reason to believe that any person required to
20 be licensed under this chapter is conducting a business without having first obtained a license
21 under this chapter, or who after the denial, suspension, or revocation of a license is conducting
22 that business, the director or his or her designee may issue an order to that person commanding
23 him or her to cease and desist from conducting that business. The order shall provide an
24 opportunity to request a hearing to be held not sooner than three (3) days after issuance of that
25 order to show cause why the order should not become final. Any order issued pursuant to this
26 section shall become final if no request for a hearing is received by the director or his or her
27 designee within thirty (30) days of the issuance of the order. The order may be served on any
28 person by mailing a copy of the order, certified mail, return receipt requested, and first class mail
29 to that person at any address at which that person has done business or at which that person lives.
30 Any hearing held pursuant to this section shall be governed in accordance with chapter 35 of title
31 42. If that person fails to comply with an order of the director or his or her designee after being
32 afforded an opportunity for a hearing, the superior court for Providence County has jurisdiction
33 upon complaint of the department to restrain and enjoin that person from violating this chapter.

34 (f) The director may impose an administrative assessment, as well as the penalties

1 provided for under section 19-14-26, against any person named in an order issued under
2 subsection (e) or, in accordance with the rules and regulations promulgated pursuant to section
3 19-14-30, against any person who violates or participates in the violation of any of the applicable
4 provisions of this title, or any regulation promulgated pursuant to any provisions of this title. The
5 amount of the administrative assessment may not exceed one thousand dollars (\$1,000) for each
6 violation of this chapter or each act or omission that constitutes a basis for issuing the order. Any
7 person aggrieved by an administrative assessment shall have the opportunity to request a hearing
8 to be held in accordance with chapter 35 of title 42 within thirty (30) days of the imposition of
9 such administrative assessment.

10 SECTION 2. Section 19-14.1-10 of the General Laws in Chapter 19-14.1 entitled
11 "Lenders and Loan Brokers" is hereby amended to read as follows:

12 **19-14.1-10. Special exemptions.** -- (a) The licensing provisions of chapter 14 of this title
13 shall not apply to:

14 (1) Nonprofit charitable, educational, or religious corporations or associations;

15 (2) Any person who makes less than six (6) loans in this state in any consecutive twelve
16 (12) month period; there is no similar exemption from licensing for loan brokers for brokering
17 loans or acting as a loan broker;

18 (3) ~~Person(s)~~ [Any person](#) acting as an agent for a licensee for the purpose of conducting
19 closings at a location other than that stipulated in the license;

20 (4) Regulated institutions and banks or credit unions organized under the laws of the
21 United States, or subject to written notice with a designated Rhode Island agent for service of
22 process in the form prescribed by the director or the director's designee, of any other state within
23 the United States if the laws of the other state in which such bank or credit union is organized
24 authorizes under conditions not substantially more restrictive than those imposed by the laws of
25 this state, as determined by the director or the director's designee, a financial institution or credit
26 union to engage in the business of originating or brokering loans in the other state; no bank or
27 credit union duly organized under the laws of any other state within the United States may receive
28 deposits, pay checks or lend money from any location within this state unless such bank or credit
29 union has received approval from the director or the director's designee for the establishment of
30 an interstate branch office pursuant to chapter 7 of title 19 of the general laws; or

31 (5) Any natural person employee who is employed by a licensee when acting on the
32 licensee's behalf; provided that this exemption shall not apply to a mortgage loan originator
33 required to be licensed under section 19-14-2 [or section 19-14.10-4](#).

34 ~~(6) A loan originator employed by an operating subsidiary of a financial institution or~~

~~1 banking institution organized under the laws of this state or any state within the United States;
2 provided, however, that any such operating subsidiary shall provide an educational program or
3 course that is relevant to the products and services offered by its employees who solicit loans on
4 behalf of such operating subsidiary.~~

5 (6) A licensed attorney when performing loan closing services for a licensee or for an
6 entity identified in subdivision (4) above.

7 (b) The provisions of this chapter and chapter 14 of this title shall not apply to:

8 (1) Loans to corporations, joint ventures, partnerships, limited liability companies or
9 other business entities;

10 (2) Loans over twenty-five thousand dollars (\$25,000) in amount to individuals for
11 business or commercial, as opposed to personal, family or household purposes;

12 (3) Loans principally secured by accounts receivable and/or business inventory;

13 (4) Loans made by a life insurance company wholly secured by the cash surrender value
14 of a life insurance policy;

15 (5) Education-purpose loans made by the Rhode Island health and educational building
16 corporation as vested in chapter 38.1 of title 45 of the Rhode Island student loan authority as
17 vested in chapter 62 of title 16;

18 (6) The acquisition of retail or loan installment contracts by an entity whose sole
19 business in this state is acquiring them from federal banks receivers or liquidators;

20 (7) Notes evidencing the indebtedness of a retail buyer to a retail seller of goods,
21 services or insurance for a part or all of the purchase price; or

22 (8) Any state or federal agency which makes, brokers, or funds loans or acts as a lender
23 or a loan broker. This exemption includes exclusive agents or exclusive contractors of the agency
24 specifically designated by the agency to perform those functions on behalf of the agency and
25 which has notified the director, in writing, of the exclusive agency or contract.

26 (9) Notes evidencing the indebtedness of a retail buyer to a retail motor vehicle dealer
27 that include as part of the amount financed, disclosed in accordance with 12 C.F.R. 226.18 as
28 amended, an amount representing negative equity related to the motor vehicle being traded in as
29 part of the purchase price of the motor vehicle being purchased.

30 (c) No license to make or fund loans, or to act as a lender or small loan lender shall be
31 required of any person who engages in deferred deposit transactions (commonly known as "pay-
32 day advance") while holding a valid license to cash checks pursuant to chapter 14 of this title.

33 SECTION 3. Title 19 of the General Laws entitled "FINANCIAL INSTITUTIONS" is
34 hereby amended by adding thereto the following chapter:

1 CHAPTER 14.10

2 AN ACT ADOPTING THE FEDERAL SECURE AND FAIR ENFORCEMENT FOR
3 MORTGAGE LICENSING ACT OF 2009

4 **19-14.10-1. Short title.** -- This chapter shall be known and may be cited as the "Secure
5 and Fair Enforcement Mortgage Licensing Act of 2009"

6 **19-14.10-2. Purpose.** -- The activities of mortgage loan originators and the origination or
7 offering of financing for residential real property have a direct, valuable and immediate impact
8 upon Rhode Island's consumers, Rhode Island's economy, the neighborhoods and communities
9 of Rhode Island, and the housing and real estate industry. The general assembly finds that
10 accessibility to mortgage credit is vital to the state's citizens. The general assembly also finds
11 that it is essential for the protection of the citizens of Rhode Island and the stability of Rhode
12 Island's economy that reasonable standards for licensing and regulation of the business practices
13 of mortgage loan originators be imposed. The general assembly further finds that the obligations
14 of mortgage loan originators to consumers in connection with originating or making residential
15 mortgage loans are such as to warrant the regulation of the mortgage lending process. The
16 purpose of this chapter is to protect consumers seeking mortgage loans and to ensure that the
17 mortgage lending industry is operating without unfair, deceptive, and fraudulent practices on the
18 part of mortgage loan originators. Therefore the general assembly establishes within this chapter:

19 (1) System of supervision and enforcement--An effective system of supervision and
20 enforcement of the mortgage lending industry, including:

21 (i) The authority to issue licenses to conduct business under this chapter, including the
22 authority to write rules or regulations or adopt procedures necessary to the licensing of persons
23 covered under this chapter.

24 (ii) The authority to deny, suspend, condition or revoke licenses issued under this chapter.

25 (iii) The authority to examine, investigate and conduct enforcement actions as necessary
26 to carry out the intended purposes of this chapter, including the authority to subpoena witnesses
27 and documents, enter orders, including cease and desist orders, order restitution and monetary
28 penalties and order the removal and ban of individuals from office or employment.

29 (2) Broad administrative authority--That the director of the department of business
30 regulation ("director") or the director's designee shall have the broad administrative authority to
31 administer, interpret and enforce this chapter, and promulgate rules or regulations implementing
32 this chapter, in order to carry out the intentions of the general assembly.

33 **19-14.10-3. Definitions.** -- For purposes of this chapter, the following definitions shall
34 apply:

1 (1) “Depository institution” has the same meaning as in section 3 of the Federal Deposit
2 Insurance Act, and includes any credit union.

3 (2) “Federal banking agencies” means the Board of Governors of the Federal Reserve
4 System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the
5 National Credit Union Administration, and the Federal Deposit Insurance Corporation.

6 (3) “Immediate family member” means a spouse, child, sibling, parent, grandparent, or
7 grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

8 (4) “Individual” means a natural person.

9 (5)(i) “Loan processor or underwriter” means an individual who performs clerical or
10 support duties as an employee at the direction of and subject to the supervision and instruction of
11 a person licensed as a lender or as a loan broker, or exempt from licensing under chapters 19-14,
12 or 19-14.1.

13 (ii) For purposes of subsection (5)(i), “clerical or support duties” may include
14 subsequent to the receipt of an application:

15 (A) The receipt, collection, distribution, and analysis of information common for the
16 processing or underwriting of a residential mortgage loan; and

17 (B) Communicating with a consumer to obtain the information necessary for the
18 processing or underwriting of a loan, to the extent that such communication does not include
19 offering or negotiating loan rates or terms, or counseling consumers about residential mortgage
20 loan rates or terms.

21 (iii) Representatives to the public--An individual engaging solely in loan processor or
22 underwriter activities, shall not represent to the public, through advertising or other means of
23 communicating or providing information including the use of business cards, stationery,
24 brochures, signs, rate lists, or other promotional items, that such individual can or will perform
25 any of the activities of a mortgage loan originator.

26 (6)(i) “Mortgage loan originator” means:

27 (A) An individual who, for compensation or gain or in the expectation of compensation
28 or gain:

29 (I) Takes a residential mortgage loan application; or

30 (II) Offers or negotiates terms of a residential mortgage loan;

31 (B) Does not include an individual engaged solely as a loan processor or underwriter
32 except as otherwise provided in subsection 19-14.10-(c);

33 (C) Does not include a person or entity that only performs real estate brokerage activities
34 and is licensed or registered in accordance with Rhode Island law, unless the person or entity is

1 compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of
2 such lender, mortgage broker, or other mortgage loan originator;

3 (D) Does not include a person or entity solely involved in extensions of credit relating to
4 timeshare plans, as that term is defined in section 101(53D) of title 11, United States Code, as
5 amended; and

6 (E) Does not include a person (or its employees) engaged in servicing mortgage loans.
7 For purposes of this exclusion, "servicing mortgage loans" means, on behalf of the note holder,
8 collecting and receiving payments, including payments of principal, interest, escrow amounts,
9 and other sums due, on obligations due and owing to the note holder pursuant to a residential
10 mortgage loan, and, when the borrower is in default, or in reasonably foreseeable likelihood of
11 default, working with the borrower on behalf of the note holder and pursuant to the contract
12 between the person servicing mortgage loans and the note holder, to modify but not refinance,
13 either temporarily or permanently, the obligations, or otherwise finalizing collection of the
14 obligation through the foreclosure process.

15 (ii) "Real estate brokerage activity" means any activity that involves offering or
16 providing real estate brokerage services to the public, including:

17 (A) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee
18 of real property;

19 (B) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of
20 real property;

21 (C) Negotiating, on behalf of any party, any portion of a contract relating to the sale,
22 purchase, lease, rental, or exchange of real property (other than in connection with providing
23 financing with respect to any such transaction);

24 (D) Engaging in any activity for which a person engaged in the activity is required to be
25 registered or licensed as a real estate agent or real estate broker under any applicable law; and

26 (E) Offering to engage in any activity, or act in any capacity, described in subparagraphs
27 (A), (B), (C), or (D) of this section.

28 (7) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing
29 system developed and maintained by the conference of state bank supervisors and the American
30 association of residential mortgage regulators for the licensing and registration of licensed
31 mortgage loan originators.

32 (8) "Nontraditional mortgage product" means any mortgage product other than a thirty
33 (30) year fixed rate mortgage.

34 (9) "Person" means a natural person, corporation, company, limited liability company,

1 partnership, association, or any other entity however organized.

2 (10) “Registered mortgage loan originator” means any individual who:

3 (i) Meets the definition of mortgage loan originator and is an employee of:

4 (A) A depository institution;

5 (B) A subsidiary that is:

6 (I) Owned and controlled by a depository institution; and

7 (II) Regulated by a Federal banking agency; or

8 (C) An institution regulated by the farm credit administration; and

9 (D) Is registered with, and maintains a unique identifier through, the nationwide

10 mortgage licensing system and registry.

11 (11) “Residential mortgage loan” means any loan primarily for personal, family, or

12 household use that is secured by a mortgage, deed of trust, or other equivalent consensual security

13 interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real

14 estate upon which is constructed or intended to be constructed a dwelling (as so defined).

15 (12) “Residential real estate” means any real property located in Rhode Island, upon

16 which is constructed or intended to be constructed a dwelling.

17 (13) “Unique identifier” means a number or other identifier assigned by protocols

18 established by the nationwide mortgage licensing system and registry.

19 **19-14.10-4. License and registration required.** -- (a) An individual, unless specifically

20 exempted from this chapter under subsection (b) of this section, shall not engage in the business

21 of a mortgage loan originator with respect to any dwelling located in this state without first

22 obtaining and maintaining annually a license under this chapter. Each licensed mortgage loan

23 originator must register with and maintain a valid unique identifier issued by the nationwide

24 mortgage licensing system and registry.

25 (b) The following are exempt from this chapter:

26 (1) Registered mortgage loan originators, when acting for an entity described in

27 subparagraphs 19-14.10-3(10) (A), (B), or (C) are exempt from this chapter.

28 (2) Any individual who offers or negotiates terms of a residential mortgage loan with or

29 on behalf of an immediate family member of the individual.

30 (3) Any individual who offers or negotiates terms of a residential mortgage loan secured

31 by a dwelling that served as the individual’s residence.

32 (4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf

33 of a client as an ancillary matter to the attorney’s representation of the client, unless the attorney

34 is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent

1 of such lender, mortgage broker, or other mortgage loan originator.

2 (5) A licensed attorney when performing loan closing services for a licensed lender,
3 licensed loan broker, or for an entity exempt from licensing under subdivision 19-14.1-10(a)(4);

4 (c) A loan processor or underwriter who is an independent contractor may not engage in
5 the activities of a loan processor or underwriter unless such independent contractor loan processor
6 or underwriter obtains and maintains a license under chapters 19-14 or 19-14.1. Each
7 independent contractor loan processor or underwriter licensed as a mortgage loan originator must
8 have and maintain a valid unique identifier issued by the nationwide mortgage licensing system
9 and registry.

10 (d) For the purposes of implementing an orderly and efficient licensing process the
11 director or the director's designee may establish licensing rules or regulations and interim
12 procedures for licensing and acceptance of applications. For previously registered or licensed
13 individuals the director or the director's designee may establish expedited review and licensing
14 procedures as follows:

15 (1) A mortgage loan originator applicant whose employer at the time of application for a
16 mortgage loan originator license is an entity described in subparagraphs 19-14.10-3(10) (A), (B),
17 or (C) and who has been assigned a unique identifier through the nationwide mortgage licensing
18 system and registry and who has completed and filed with the director or the director's designee
19 all information, documents and requirements for licensure pursuant to this chapter shall be
20 permitted to continue to act as a mortgage loan originator for the period prior to action being
21 taken on his or her application by the director or the director's designee;

22 (2) A mortgage loan originator applicant who has been assigned a unique identifier
23 through the nationwide mortgage licensing system and registry and who has completed and filed
24 with the director or the director's designee all information, documents and requirements for
25 licensure pursuant to this chapter and whose employer at the time of application for a mortgage
26 loan originator license is a lender or loan broker licensed under chapter 19-14 and 19-14.1, shall
27 be permitted to continue to act as a mortgage loan originator for the period prior to action being
28 taken on his or her application by the director or director's designee if the applicant and a senior
29 officer or principal of such lender or loan broker files written attestation to the director or the
30 director's designee that:

31 (i) The applicant is currently or has within the six (6) month period prior to the date of the
32 application been acting as a registered mortgage loan originator in this state or as a state-licensed
33 mortgage loan originator in another state, in either case under the provisions of Section 1507 of
34 the SAFE Act;

1 (ii) The applicant has never had a mortgage loan license or registration denied, revoked,
2 or suspended in any governmental jurisdiction; and

3 (iii) the applicant has not been convicted of a felony that would otherwise authorize the
4 director or the director's designee to deny the applicant a license.

5 (3) Any provisional authority to act as a mortgage loan originator issued pursuant to this
6 subsection (d) shall expire on the earlier of: (i) The date on which the director or the director's
7 designee issues or denies the application for the license; or (ii) One hundred twenty (120) days
8 from the date of application for the license.

9 (4) The director or the director's designee may deny or suspend the rights of a lender or
10 loan broker licensed under chapter 19-14 or 19-14.1 to employ a mortgage loan originator under
11 this subsection (d) if the director or the director's designee finds that such lender or loan broker, a
12 senior official or principal thereof, or the applicant failed to exercise due diligence and good faith
13 when submitting the attestations required in subdivision (d)(1) or (d)(2) above.

14 **19-14.10-5. State license and registration application and issuance.** – (a) Applicants
15 for a license shall apply in a form as prescribed by the director or the director's designee. Each
16 such form shall contain content as set forth by rule, regulation, instruction or procedure of the
17 director or the director's designee and may be changed or updated as necessary by the director or
18 the director's designee in order to carry out the purposes of this chapter.

19 (b) In order to fulfill the purposes of this chapter, the director or the director's designee is
20 authorized to establish relationships or contracts with the nationwide mortgage licensing system
21 and registry or other entities designated by the nationwide mortgage licensing system and registry
22 to collect and maintain records and process transaction fees or other fees related to licensees or
23 other persons subject to this chapter.

24 (c) In connection with an application for licensing as a mortgage loan originator, the
25 applicant shall, at a minimum, furnish to the nationwide mortgage licensing system and registry
26 information concerning the applicant's identity, including:

27 (1) Fingerprints for submission to the Federal Bureau of Investigation, and any
28 governmental agency or entity authorized to receive such information for a state, national and
29 international criminal history background check; and

30 (2) Personal history and experience in a form prescribed by the nationwide mortgage
31 licensing system and registry, including the submission of authorization for the nationwide
32 mortgage licensing system and registry and the director to obtain:

33 (i) An independent credit report obtained from a consumer reporting agency described in
34 section 603(p) of the Fair Credit Reporting Act; and

1 (ii) Information related to any administrative, civil or criminal findings by any
2 governmental jurisdiction.

3 (d) For the purposes of this section and in order to reduce the points of contact which the
4 Federal Bureau of Investigation may have to maintain for purposes of this section the director or
5 the director's designee may use the nationwide mortgage licensing system and registry as a
6 channeling agent for requesting information from and distributing information to the U.S.
7 Department of Justice or any governmental agency.

8 (e) For the purposes of this section and in order to reduce the points of contact which the
9 director or the director's designee may have to maintain for purposes of this section the director
10 or the director's designee may use the nationwide mortgage licensing system and registry as a
11 channeling agent for requesting and distributing information to and from any source so directed
12 by the director or the director's designee.

13 **19-14.10-6. Issuance of license. --** The director or the director's designee shall not
14 approve a mortgage loan originator license unless the director or the director's designee makes at
15 a minimum the following findings:

16 (1) The applicant has never had a mortgage loan originator license revoked in any
17 governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not
18 be deemed a revocation.

19 (2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony
20 in a domestic, foreign, or military court:

21 (i) During the seven (7) year period preceding the date of the application for licensing
22 and registration; or

23 (ii) At any time preceding such date of application, if such felony involved an act of
24 fraud, dishonesty, or a breach of trust, or money laundering.

25 (iii) Pardon of a conviction shall not be a conviction for purposes of this subsection.

26 (3) The applicant has demonstrated financial responsibility, character, and general fitness
27 such as to command the confidence of the community and to warrant a determination that the
28 mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this
29 chapter.

30 (i) For purposes of this subsection a person has shown that he or she is not financially
31 responsible when he or she has shown a disregard in the management of his or her own financial
32 condition. A determination that an individual has not shown financial responsibility may include,
33 but not be limited to:

34 (i) Current outstanding judgments, except judgments solely as a result of medical

1 expenses;

2 (ii) Current outstanding tax liens or other government liens and filings;

3 (iii) Foreclosures within the past three years;

4 (iv) A pattern of seriously delinquent accounts within the past three (3) years.

5 (d) The applicant has completed the pre-licensing education requirement described in
6 section 19-14.10-7.

7 (e) The applicant has passed a written test that meets the test requirement described in
8 section 19-14.10-8.

9 (f) The applicant has met the net worth or surety bond requirements required pursuant to
10 19-14.10-14.

11 **19-14.10-7. Pre-licensing and re-licensing education of loan originators. -- (a) In**
12 order to meet the pre-licensing education requirement referred to in this chapter a person shall
13 complete at least twenty (20) hours of education approved in accordance with subsection (b) of
14 this section, which shall include at least:

15 (1) Three (3) hours of Federal law and regulations;

16 (2) Three (3) hours of ethics, which shall include instruction on fraud, consumer
17 protection, and fair lending issues;

18 (3) Two (2) hours of training related to lending standards for the nontraditional mortgage
19 product marketplace; and

20 (4) Three (3) hours of Rhode Island law and regulations.

21 (b) For purposes of subsection (a) of this section, pre-licensing education courses shall be
22 reviewed, and approved by the nationwide mortgage licensing system and registry based upon
23 reasonable standards. Review and approval of a pre-licensing education course shall include
24 review and approval of the course provider.

25 (c) Nothing in this section shall preclude any pre-licensing education course, as approved
26 by the nationwide mortgage licensing system and registry that is provided by the employer of the
27 applicant or an entity which is affiliated with the applicant by an agency contract, or any
28 subsidiary or affiliate of such employer or entity.

29 (d) Pre-licensing education may be offered either in a classroom, online or by any other
30 means approved by the nationwide mortgage licensing system and registry.

31 (e) The pre-licensing education requirements approved by the nationwide mortgage
32 licensing system and registry for any state shall be accepted as credit towards completion of pre-
33 licensing education requirements in Rhode Island.

34 (f) A person previously licensed under this chapter subsequent to the effective date of this

1 chapter applying to be licensed again must prove that they have completed all of the continuing
2 education requirements for the year in which the license was last held.

3 **19-14.10-8. Testing of loan originators.** -- (a) In order to meet the written test
4 requirement referred to in this chapter, an individual shall pass, in accordance with the standards
5 established under this subsection, a qualified written test developed by the nationwide mortgage
6 licensing system and registry and administered by a test provider approved by the nationwide
7 mortgage licensing system and registry based upon reasonable standards.

8 (b) A written test shall not be treated as a qualified written test for purposes of this
9 section unless the test adequately measures the applicant's knowledge and comprehension in
10 appropriate subject areas, including:

11 (1) Ethics;

12 (2) Federal law and regulation pertaining to mortgage origination;

13 (3) State law and regulation pertaining to mortgage origination;

14 (4) Federal and State law and regulation, including instruction on fraud, consumer
15 protection, the nontraditional mortgage marketplace, and fair lending issues.

16 (c) Nothing in this section shall prohibit a test provider approved by the nationwide
17 mortgage licensing system and registry from providing a test at the location of the employer of
18 the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the
19 location of any entity with which the applicant holds an exclusive arrangement to conduct the
20 business of a mortgage loan originator.

21 (d)(1) An individual shall not be considered to have passed a qualified written test unless
22 the individual achieves a test score of not less than seventy-five percent (75%) correct answers to
23 questions.

24 (2) An individual may retake a test three (3) consecutive times with each consecutive
25 taking occurring at least thirty (30) days after the preceding test.

26 (3) After failing three (3) consecutive tests, an individual shall wait at least six (6) months
27 before taking the test again.

28 (4) A licensed mortgage loan originator who fails to maintain a valid license for a period
29 of five (5) years or longer shall retake the test, not taking into account any time during which
30 such individual is a registered mortgage loan originator.

31 **19-14.10-9. Standards for license renewal.** -- (a) The minimum standards for license
32 renewal for mortgage loan originators shall include the following:

33 (1) The mortgage loan originator continues to meet the minimum standards for license
34 issuance under subsection 19-14.10-6.

1 (2) The mortgage loan originator has satisfied the annual continuing education
2 requirements described in section 19-14.10-10.

3 (3) The mortgage loan originator has paid all required fees for renewal of the license.

4 (b) The license of a mortgage loan originator failing to satisfy the minimum standards for
5 license renewal shall expire. The director or the director's designee may adopt procedures for the
6 reinstatement of expired licenses consistent with the standards established by the Nationwide
7 Mortgage Licensing System and Registry.

8 **19-14.10-10. Continuing education for mortgage loan originators.** -- (a) In order to
9 meet the annual continuing education requirements referred to in section 19-14.10-9, a licensed
10 mortgage loan originator shall complete at least (8) hours of education approved in accordance
11 with subsection (2) of this section, which shall include at least:

12 (1) Three (3) hours of Federal law and regulations;

13 (2) Two (2) hours of ethics, which shall include instruction on fraud, consumer
14 protection, and fair lending issues;

15 (3) Two (2) hours of training related to lending standards for the nontraditional mortgage
16 product marketplace; and

17 (4) One hour of Rhode Island law and regulations.

18 (b) For purposes of this section, continuing education courses shall be reviewed, and
19 approved by the nationwide mortgage licensing system and registry based upon reasonable
20 standards. Review and approval of a continuing education course shall include review and
21 approval of the course provider.

22 (c) Nothing in this section shall preclude any education course, as approved by the
23 nationwide mortgage licensing system and registry, that is provided by the employer of the
24 mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an
25 agency contract, or any subsidiary or affiliate of such employer or entity.

26 (d) Continuing education may be offered either in a classroom, online or by any other
27 means approved by the Nationwide Mortgage Licensing System and Registry.

28 (e) A licensed mortgage loan originator:

29 (1) Except for subsection 19-14.10-9 (b) and subsection (i) of this section, may only
30 receive credit for a continuing education course in the year in which the course is taken; and

31 (2) May not take the same approved course in the same or successive years to meet the
32 annual requirements for continuing education.

33 (f) A licensed mortgage loan originator who is an approved instructor of an approved
34 continuing education course may receive credit for the licensed mortgage loan originator's own

1 annual continuing education requirement at the rate of two (2) hours credit for every one hour
2 taught.

3 (g) A person having successfully completed the education requirements approved by the
4 nationwide mortgage licensing system and registry in subdivision (a)(1), (a)(2) and (a)(3) of this
5 section for any state shall be accepted as credit towards completion of continuing education
6 requirements in Rhode Island. Nothing herein shall relieve an applicant of the obligation to
7 satisfy educational requirements specifically related to Rhode Island law and regulations.

8 (h) A licensed mortgage loan originator who subsequently becomes unlicensed must
9 complete the continuing education requirements for the last year in which the license was held
10 prior to issuance of a new or renewed license.

11 (i) A person meeting the requirements of subdivision 19-14.10-9 (a)(1) and (a)(3) may
12 make up any deficiency in continuing education as established by rule or regulation of the
13 director or the director's designee.

14 **19-14.10-11. Authority to require license.** – In addition to any other duties imposed
15 upon the director or the director's designee by law, the director or the director's designee shall
16 require mortgage loan originators to be licensed and registered through the nationwide mortgage
17 licensing system and registry. In order to carry out this requirement the director or the director's
18 designee is authorized to participate in the nationwide mortgage licensing system and registry.
19 For this purpose, the director or the director's designee may establish by rule or regulation
20 requirements as necessary, including but not limited to:

21 (1) Background checks for:

22 (i) Criminal history through fingerprint or other databases;

23 (ii) Civil or administrative records;

24 (iii) Credit history; or

25 (2) Any other information as deemed necessary by the nationwide mortgage licensing
26 system and registry.

27 (3) The payment of fees to apply for or renew licenses through the nationwide mortgage
28 licensing system and registry;

29 (4) The setting or resetting as necessary of renewal or reporting dates; and

30 (5) Requirements for amending or surrendering a license or any other such activities as
31 the director or the director's designee deems necessary for participation in the nationwide
32 mortgage licensing system and registry.

33 **19-14.10-12. Nationwide mortgage licensing system and registry information**
34 **challenge process.** -- The director or the director's designee shall establish a process whereby

1 mortgage loan originators may challenge information entered into the nationwide mortgage
2 licensing system and registry by the director or the director's designee.

3 **19-14.10-13. Enforcement authorities, violations and penalties.** -- (a) In order to
4 ensure the effective supervision and enforcement of this chapter the director or the director's
5 designee may, pursuant to chapter 42-35:

6 (1) Deny, suspend, revoke, condition or decline to renew a license for a violation of this
7 chapter, rules or regulations issued under this chapter or order or directive entered under this
8 chapter.

9 (2) Deny, suspend, revoke, condition or decline to renew a license if an applicant or
10 licensee fails at any time to meet the requirements of section 19-14.10-6 or 19-14.10-9, or
11 withholds information or makes a material misstatement in an application for a license or renewal
12 of a license.

13 (3) Order restitution against persons subject to this chapter for violations of this chapter.

14 (4) Impose fines on persons subject to this chapter pursuant to subsections (b), (c) and (d)
15 of this section.

16 (5) Issue orders or directives under this chapter as follows:

17 (i) Order or direct persons subject to this chapter to cease and desist from conducting
18 business, including immediate temporary orders to cease and desist.

19 (ii) Order or direct persons subject to this chapter to cease any harmful activities or
20 violations of this chapter, including immediate temporary orders to cease and desist.

21 (iii) Enter immediate temporary orders to cease business under a license or interim
22 license issued pursuant to the authority granted under this chapter if the director or the director's
23 designee determines that such license was erroneously granted or the licensee is currently in
24 violation of this chapter;

25 (iv) Order or direct such other affirmative action as the director or the director's designee
26 deems necessary.

27 (2) The director or the director's designee may impose a civil penalty on a mortgage loan
28 originator and any lender or loan broker licensed under chapter 19-14 or 19-14.1 which employs
29 such mortgage loan originator, if the director or the director's designee finds, on the record after
30 notice and opportunity for hearing, that such mortgage loan originator has violated or failed to
31 comply with any requirement of this chapter or any regulation prescribed by the director or the
32 director's designee under this chapter or order issued under authority of this chapter. In addition,
33 the director or the director's designee may impose a civil penalty on a lender or loan broker
34 licensed under chapter 19-14 or 19-14.1 which employs any mortgage loan originator licensed

1 under this chapter, if the director or the director's designee finds, on the record after notice and
2 opportunity for hearing, that such lender or loan broker has violated or failed to comply with any
3 requirement of this chapter or any such regulation or order.

4 (3) The maximum amount of penalty for each act or omission described in subsection (b)
5 of this section shall be twenty-five thousand five hundred dollars (\$25,000).

6 (4) Each violation or failure to comply with any directive or order of the director or the
7 director's designee is a separate and distinct violation or failure.

8 **19-14.10-14. Surety bond required.** -- (a) Each mortgage loan originator shall be
9 covered by a surety bond in accordance with this section. In the event that the mortgage loan
10 originator is an employee of a lender or loan broker licensed under chapter 19-14, the surety bond
11 of such lender or loan broker as required in accordance with the provisions of such chapter and
12 adjusted by the amounts required by this section can be used in lieu of the mortgage loan
13 originator's surety bond requirement.

14 (1) The surety bond shall provide coverage for each mortgage loan originator in an
15 amount as prescribed in subsection (b) of this section.

16 (2) The surety bond shall be in a form as prescribed by the director or the director's
17 designee.

18 (3) The director or the director's designee may promulgate rules or regulations with
19 respect to the requirements for such surety bonds as are necessary to accomplish the purposes of
20 this chapter.

21 (b) The penal sum of the surety bond shall be maintained in an amount that reflects the
22 dollar amount of loans originated as determined by the director or the director's designee by
23 regulation adopted within one hundred twenty (120) days of the effective date of this section.

24 (c) When an action is commenced on a licensee's bond the director or the director's
25 designee may require the filing of a new bond.

26 (d) Immediately upon recovery upon any action on the bond the licensee shall file a new
27 bond.

28 (e) A minimum net worth shall be continuously maintained for mortgage loan originators
29 in accordance with this section. In the event that the mortgage loan originator is an employee, a
30 lender or loan broker licensed under chapter 19-14, the net worth can be used in lieu of the
31 mortgage loan originator's minimum net worth requirement.

32 In addition:

33 (1) Minimum net worth shall be maintained in an amount that reflects the dollar amount
34 of loans originated as determined by the director or the director's designee.

1 (2) The director or the director’s designee shall within one hundred twenty (120) days of
2 the effective date of this section promulgate rules or regulations with respect to the requirements
3 for minimum net worth as are necessary to accomplish the purposes of this chapter.

4 **19-14.10-15. Confidentiality.** –In order to promote more effective regulation and reduce
5 regulatory burden through supervisory information sharing:

6 (1) Except as otherwise provided in public law 110-289, section 1512, the requirements
7 under any Federal law or chapter 2 of title 38 of the general laws of Rhode Island regarding the
8 privacy or confidentiality of any information or material provided to the nationwide mortgage
9 licensing system and registry, and any privilege arising under Federal or state law (including the
10 rules of any Federal or state court) with respect to such information or material, shall continue to
11 apply to such information or material after the information or material has been disclosed to the
12 nationwide mortgage licensing system and registry. Such information and material may be shared
13 with all state and Federal regulatory officials with mortgage industry oversight authority without
14 the loss of privilege or the loss of confidentiality protections provided by Federal or said chapter
15 2 of Title 38 of the general laws of Rhode Island.

16 (2) For these purposes, the director or the director’s designee is authorized to enter
17 agreements or sharing arrangements with other governmental agencies, the Conference of State
18 Bank Supervisors, the American Association of Residential Mortgage Regulators or other
19 associations representing governmental agencies as established by rule, regulation or order of the
20 director or the director’s designee.

21 (3) Information or material that is subject to a privilege or confidentiality under
22 subsection (a) of this section shall not be subject to:

23 (i) Disclosure under any Federal or state law governing the disclosure to the public of
24 information held by an officer or an agency of the Federal government or the respective state; or

25 (ii) Subpoena or discovery, or admission into evidence, in any private civil action or
26 administrative process, unless with respect to any privilege held by the nationwide mortgage
27 licensing system and registry with respect to such information or material, the person to whom
28 such information or material pertains waives, in whole or in part, in the discretion of such person,
29 that privilege.

30 (4) Section 19-4-3 relating to the disclosure of confidential supervisory information or
31 any information or material described in this section that is inconsistent with this section shall be
32 superseded by the requirements of this section.

33 (5) This section shall not apply with respect to the information or material relating to the
34 employment history of, and publicly adjudicated disciplinary and enforcement actions against,

1 mortgage loan originators that is included in the nationwide mortgage licensing system and
2 registry for access by the public.

3 **19-14.10-16. Investigation and examination authority.** -- In addition to any authority
4 allowed under this chapter the director or the director's designee shall have the authority to
5 conduct investigations and examinations as follows:

6 (1) For purposes of initial licensing, license renewal, license suspension, license
7 conditioning, license revocation or termination, or general or specific inquiry or investigation to
8 determine compliance with this chapter, the director or the director's designee shall have the
9 authority to access, receive and use any books, accounts, records, files, documents, information or
10 evidence including but not limited to:

11 (i) Criminal, civil and administrative history information, including non-conviction data,
12 or other non-public record as specified in subparagraph 38-2-2(4)(D), specifically, or any other
13 criminal, civil, and administrative record deemed non-public under section 38-2-1 et seq.,
14 generally; and

15 (ii) Personal history and experience information including independent credit reports
16 obtained from a consumer reporting agency described in section 603(p) of the Federal Fair Credit
17 Reporting Act; and

18 (iii) Any other documents, information or evidence the director or the director's designee
19 deems relevant to the inquiry or investigation regardless of the location, possession, control or
20 custody of such documents, information or evidence.

21 (2) For the purposes of investigating violations or complaints arising under this chapter,
22 or for the purposes of examination, the director or the director's designee may review,
23 investigate, or examine any licensee, individual or person subject to this chapter, as often as
24 necessary in order to carry out the purposes of this chapter. The director or the director's
25 designee may direct, subpoena, or order the attendance of and examine under oath all persons
26 whose testimony may be required about the loans or the business or subject matter of any such
27 examination or investigation, and may direct, subpoena, or order such person to produce books,
28 accounts, records, files, and any other documents the director or the director's designee deems
29 relevant to the inquiry.

30 (3) Each licensee, individual or person subject to this chapter shall make available to the
31 director or the director's designee upon request the books and records relating to the operations of
32 such licensee, individual or person subject to this chapter. The director or the director's designee
33 shall have access to such books and records and interview the officers, principals, mortgage loan
34 originators, employees, independent contractors, agents, and customers of the licensee, individual

1 or person subject to this chapter concerning their business.

2 (4) Each licensee, individual or person subject to this chapter shall make or compile
3 reports or prepare other information as directed by the director or the director's designee in order
4 to carry out the purposes of this section including but not limited to:

5 (i) Accounting compilations;

6 (ii) Information lists and data concerning loan transactions in a format prescribed by the
7 director or the director's designee; or

8 (iii) Such other information deemed necessary to carry out the purposes of this section.

9 (5) In making any examination or investigation authorized by this chapter, the director or
10 the director's designee may control access to any documents and records of the licensee or person
11 under examination or investigation. The director or the director's designee may take possession of
12 the documents and records or place a person in exclusive charge of the documents and records in
13 the place where they are usually kept. During the period of control, no individual or person shall
14 remove or attempt to remove any of the documents and records except pursuant to a court order
15 or with the consent of the director or the director's designee. Unless the director or the director's
16 designee has reasonable grounds to believe the documents or records of the licensee have been, or
17 are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the
18 licensee or owner of the documents and records shall have access to the documents or records as
19 necessary to conduct its ordinary business affairs.

20 (6) In order to carry out the purposes of this section, the director or the director's
21 designee may:

22 (i) Retain attorneys, accountants, or other professionals and specialists as examiners,
23 auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

24 (ii) Enter into agreements or relationships with other government officials or regulatory
25 associations in order to improve efficiencies and reduce regulatory burden by sharing resources,
26 standardize or uniform methods or procedures, and documents, records, information or evidence
27 obtained under this section;

28 (iii) Use, hire, contract or employ public or privately available analytical systems,
29 methods or software to examine or investigate the licensee, individual or person subject to this
30 chapter;

31 (iv) Accept and rely on examination or investigation reports made by other government
32 officials, within or without this state; or

33 (v) Accept audit reports made by an independent certified public accountant for the
34 licensee, individual or person subject to this chapter in the course of that part of the examination

1 covering the same general subject matter as the audit and may incorporate the audit report in the
2 report of the examination, report of investigation or other writing of the director or the director's
3 designee.

4 (7) The authority of this section shall remain in effect, whether such a licensee, individual
5 or person subject to this chapter acts or claims to act under any licensing or registration law of
6 this state, or claims to act without such authority.

7 (8) No licensee, individual or person subject to investigation or examination under this
8 section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books,
9 records, computer records, or other information.

10 **19-14.10-17. Prohibited acts and practices. -- It is a violation of this chapter for a**
11 **person or individual subject to this chapter to:**

12 (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead
13 borrowers or lenders or to defraud any person;

14 (2) Engage in any unfair or deceptive practice toward any person;

15 (3) Obtain property by fraud or misrepresentation;

16 (4) Solicit or enter into a contract with a borrower that provides in substance that the
17 person or individual subject to this chapter may earn a fee or commission through "best efforts"
18 to obtain a loan even though no loan is actually obtained for the borrower;

19 (5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other
20 financing terms unless the terms are actually available at the time of soliciting, advertising, or
21 contracting;

22 (6) Conduct any business covered by this chapter without holding a valid license as
23 required under this chapter, or assist or aide and abet any person in the conduct of business under
24 this chapter without a valid license as required under this chapter;

25 (7) Fail to make disclosures as required by this chapter and any other applicable state or
26 federal law including regulations thereunder;

27 (8) Fail to comply with this chapter or rules or regulations promulgated under this
28 chapter, or fail to comply with any other state or federal law, including the rules and regulations
29 thereunder, applicable to any business authorized or conducted under this chapter;

30 (9) Make, in any manner, any false or deceptive statement or representation with regard
31 to the rates, points, or other financing terms or conditions for a residential mortgage loan, or
32 engage in bait and switch advertising;

33 (10) Negligently make any false statement or knowingly and willfully make any omission
34 of material fact in connection with any information or reports filed with a governmental agency

1 or the nationwide mortgage licensing system and registry or in connection with any investigation
2 conducted by the director or the director's designee or another governmental agency;

3 (11) Make any payment, threat or promise, directly or indirectly, to any person for the
4 purposes of influencing the independent judgment of the person in connection with a residential
5 mortgage loan, or make any payment threat or promise, directly or indirectly, to any appraiser of
6 a property, for the purposes of influencing the independent judgment of the appraiser with respect
7 to the value of the property;

8 (12) Collect, charge, attempt to collect or charge or use or propose any agreement
9 purporting to collect or charge any fee prohibited by this chapter;

10 (13) Cause or require a borrower to obtain property insurance coverage in an amount that
11 exceeds the replacement cost of the improvements as established by the property insurer.

12 (14) Fail to truthfully account for monies belonging to a party to a residential mortgage
13 loan transaction.

14 **19-14.10-18. Mortgage call reports.** -- Each lender, loan broker or mortgage loan
15 originator licensee shall submit to the nationwide mortgage licensing system and registry reports
16 of condition, which shall be in such form and shall contain such information as the nationwide
17 mortgage licensing system and registry may require.

18 **19-14.10-19. Report to nationwide mortgage licensing system and registry.** -- Subject
19 to state privacy law the director or the director's designee is required to report regularly violations
20 of this chapter, as well as enforcement actions and other relevant information, to the nationwide
21 mortgage licensing system and registry subject to the provisions contained in section 19-1-4-3.

22 **19-14.10-20. Reserved.** --

23 **19-14.10-21. Unique identifier shown.** -- The name and the unique identifier of any
24 person originating a residential mortgage loan shall be clearly shown on all residential mortgage
25 loan application forms, solicitations or advertisements, including business cards or websites, and
26 any other documents as established by rule, regulation or order of the director or the director's
27 designee.

28 **19-14.10-22. Severability.** -- If any provision of this chapter or its application to any
29 person or circumstance is held invalid, the remainder of the chapter or the application of the
30 provision to other persons or circumstances is not affected.

31 SECTION 4. Sections 1 and 2 shall take effect upon passage, provided that the
32 amendment to subsection 19-14-3(e) shall not be effective until the effective date of section 3.
33 With respect to section 3, the effective date for persons not licensed as mortgage loan originators
34 as of the effective date shall be July 31, 2009, and the effective date for all person licensed as

- 1 mortgage loan originators as of the effective date shall be January 1, 2010, or such other dates as
- 2 approved by the U.S. department of housing and urban development.

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LC01503/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO FINANCIAL INSTITUTIONS

1 This act would amend existing requirements for the licensing of mortgage loan
2 originators in order to effect the provisions of the Secure and Fair Enforcement for Mortgage
3 Licensing Act.

4 Sections 1 and 2 would take effect upon passage, provided that the amendment to
5 subsection 19-14-3(e) would not be effective until the effective date of section 3. With respect to
6 section 3, the effective date for persons not licensed as mortgage loan originators as of the
7 effective date would be July 31, 2009, and the effective date for all person licensed as mortgage
8 loan originators as of the effective date would be January 1, 2010, or such other dates as approved
9 by the U.S. department of housing and urban development.

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