

2018 -- H 7557

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO FINANCIAL INSTITUTIONS - SMALL LOAN LENDERS

Introduced By: Representatives Barros, Maldonado, Blazejewski, Tobon, and Shanley

Date Introduced: February 09, 2018

Referred To: House Finance

It is enacted by the General Assembly as follows:

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

3 **19-14-1. Definitions.**

4 Unless otherwise specified, the following terms shall have the following meanings
5 throughout chapters 14, 14.1, 14.2, 14.3, 14.4, 14.6, 14.8, 14.10, and 14.11 of this title:

6 (1) "Bona fide employee" shall mean an employee of a licensee who works under the
7 oversight and supervision of the licensee.

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

12 (3) "Check casher" means a person or entity who or that, for compensation, engages, in
13 whole or in part, in the business of cashing checks.

14 (4) ~~"Deferred deposit transaction" means any transaction, such as those commonly~~
15 ~~known as "payday loans", "payday advances", or "deferred presentment loans", in which a cash~~
16 ~~advance is made to a customer in exchange for the customer's personal check or in exchange for~~
17 ~~the customer's authorization to debit the customer's deposit account and where the parties agree~~
18 ~~either that the check will not be cashed or deposited, or that the customer's deposit account will~~
19 ~~not be debited until a designated future date.~~

1 (5) "Deliver" means to deliver a check to the first person who, in payment for the check,
2 makes, or purports to make, a remittance of, or against, the face amount of the check, whether or
3 not the deliverer also charges a fee in addition to the face amount and whether or not the deliverer
4 signs the check.

5 (6) "Electronic money transfer" means receiving money for transmission within the
6 United States or to locations abroad by any means including, but not limited to, wire, facsimile, or
7 other electronic transfer system.

8 (7) "Insurance premium finance agreement" means an agreement by which an insured, or
9 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 (8) "Insurance premium finance company" means a person or entity engaged in the
14 business of making insurance premium finance agreements or acquiring insurance premium
15 finance agreements from other insurance premium finance companies.

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

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

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

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

23 (C) The loan closes within this state;

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

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

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

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

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

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

5 (D) Under the circumstances, as set forth in regulations adopted by the director, or the
6 director's designee, pursuant to this chapter.

7 (10) "Licensee" means any person licensed under this chapter.

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

9 (i) Loans secured by mortgages;

10 (ii) Insurance premium finance agreements;

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

13 (iv) Educational loans; or

14 (v) Any other advance of money; ~~or.~~

15 (vi) ~~Any transaction, such as those commonly known as "payday loans", "payday~~
16 ~~advances", or "deferred presentment loans", in which a cash advance is made to a customer in~~
17 ~~exchange for the customer's personal check, or in exchange for the customer's authorization to~~
18 ~~debit the customer's deposit account, and where the parties agree either, that the check will not be~~
19 ~~cashed or deposited, or that customer's deposit account will not be debited, until a designated~~
20 ~~future date.~~

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

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

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

29 (iii) The loan closes within this state;

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

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

32 (13) "Loan-closing services" means providing title services, including title searches, title
33 examinations, abstract preparation, insurability determinations, and the issuance of title
34 commitments and title insurance policies, conducting loan closings, and preparation of loan-

1 closing documents when performed by, or under the supervision of, a licensed attorney, licensed
2 title agency, or licensed title insurance company.

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

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

18 (16) "Mortgage loan" means a loan secured in whole, or in part, by real property located
19 in this state.

20 (17) "Mortgage loan originator" has the same meaning set forth in § 19-14.10-3(6).

21 (18) "Multi-state licensing system" means a system involving one or more states, the
22 District of Columbia, or the Commonwealth of Puerto Rico established to facilitate the sharing of
23 regulatory information and the licensing, application, reporting, and payment processes, by
24 electronic or other means, for mortgage lenders and loan brokers and other licensees required to
25 be licensed under this chapter.

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

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

1 amount.

2 (21) "Negotiates" shall mean, with respect to a loan, to confer directly with, or offer
3 advice directly to, a loan applicant or prospective loan applicant for a loan product or service
4 concerning any of the substantive benefits, terms, or conditions of the loan product or service.

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

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

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

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

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

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

24 (28) "Processes" shall mean, with respect to a loan, any of a series of acts or functions,
25 including the preparation of a loan application and supporting documents, performed by a person
26 that leads to, or results in, the acceptance, approval, denial, and/or withdrawal of a loan
27 application, including, without limitation, the rendering of services, including loan underwriting,
28 obtaining verifications, credit reports or appraisals, communicating with the applicant and/or the
29 lender or loan broker, and/or other loan processing and origination services, for consideration by
30 a lender or loan broker. Loan processing does not include the following:

- 31 (i) Providing loan closing services;
32 (ii) Rendering of credit reports by an authorized credit reporting agency; and
33 (iii) Rendering of appraisal services.

34 (29) "Provisional employee" means a natural person who, pursuant to a written

1 agreement between the natural person and a wholly owned subsidiary of a financial holding
2 company, as defined in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), as
3 amended, a bank-holding company, savings-bank-holding company, or thrift-holding company, is
4 an exclusive agent for the subsidiary with respect to mortgage loan originations and the
5 subsidiary: (a) Holds a valid loan broker's license; and (b) Enters into a written agreement with
6 the director, or the director's designee, to include:

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

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

14 (iii) A restriction of the exclusive agents' mortgage loan originators' activities to loans to
15 be made only by the subsidiary's affiliated bank.

16 (30) "Sell" means to sell, to issue, or to deliver a check.

17 (31) "Servicing" means receiving a scheduled, periodic payment from a borrower,
18 pursuant to the terms of a loan, including amounts for escrow accounts, and making the payments
19 to the owner of the loan or other third party of principal and interest and other payments with
20 respect to the amounts received from the borrower as may be required pursuant to the terms of the
21 servicing loan documents or servicing contract. In the case of a home equity conversion mortgage
22 or a reverse mortgage, servicing includes making payment to the borrower.

23 (32) "Simple interest" means interest computed on the principal balance outstanding
24 immediately prior to a payment for the actual number of days between payments made on a loan
25 over the life of a loan.

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

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

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

33 (36) "Third-party loan servicer" means a person or entity who or that, directly or
34 indirectly, engages in the business of servicing a loan secured by residential real estate located in

1 Rhode Island, for a personal, family, or household purpose, owed or due, or asserted to be owed
2 or due, another, or a person or entity that owns the servicing rights to a loan secured by residential
3 real estate located in Rhode Island whether or not that owner services the loan themselves or
4 contracts with another person or entity for the servicing.

5 (37) "Writing" means hard-copy writing or electronic writing that meets the requirements
6 of § 42-127.1-2(7).

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

9 **19-14.1-10. Special exemptions.**

10 (a) The licensing provisions of chapter 14 of this title shall not apply to:

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

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

15 (3) Any person acting as an agent for a licensee for the purpose of conducting closings at
16 a location other than that stipulated in the license;

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

28 (5) Any natural person employee who is employed by a licensee when acting on the
29 licensee's behalf; provided that this exemption shall not apply to a mortgage loan originator
30 required to be licensed under § 19-14-2 or § 19-14.10-4; or

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

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

34 (1) Loans to corporations, joint ventures, partnerships, limited liability companies or

1 other business entities;

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

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

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

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

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

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

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

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

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

25 SECTION 3. Section 19-14.2-1 of the General Laws in Chapter 19-14.2 entitled "Small
26 Loan Lenders" is hereby amended to read as follows:

27 **19-14.2-1. Maximum rate on small loans not authorized by chapter.**

28 (a) No person, except as authorized by this chapter, shall directly or indirectly charge,
29 contract for, or receive any interest, discount, or consideration greater than provided by this
30 chapter upon the loan, use, or sale of credit of the amount or value of five thousand dollars
31 (\$5,000) or less.

32 (b) The prohibition in subsection (a) shall apply to any person who, by any device,
33 subterfuge, or pretense shall charge, contract for, or receive greater interest, consideration, or
34 charges than is authorized by this chapter for the loan, use, or forbearance of money, goods, or

1 things in action, or for the loan, use, or sale of credit.

2 (c) No loan of the amount or value of five thousand dollars (\$5,000) or less for which a
3 greater rate of interest, consideration, or charges than is permitted by this chapter has been
4 charged, contracted for, or received, wherever made, shall be enforced in this state, and every
5 person in any way participating therein in this state shall be subject to the provisions of this
6 chapter, provided that this section shall not apply to loans legally made in any other state,
7 commonwealth, or district which then has in effect a regulatory small loan law similar in
8 principal to this chapter.

9 (d) No person may engage in any device, subterfuge, or pretense to evade the
10 requirements of this chapter, including making loans disguised as personal property sales and
11 leaseback transactions, or disguising loan proceeds as cash rebates for the pretextual installment
12 sale of goods or services, or assisting a debtor to obtain a loan with a greater rate of interest,
13 consideration, or charges than is permitted by this chapter through any method including mail,
14 telephone, Internet, or any electronic means regardless of whether the person has a physical
15 location in the state.

16 SECTION 4. Sections 19-14.4-4 and 19-14.4-5 of the General Laws in Chapter 19-14.4
17 entitled "Check Cashing" are hereby amended to read as follows:

18 **19-14.4-4. Fees for services.**

19 No licensee shall:

20 (1) Charge check-cashing fees in excess of three percent (3%) of the face amount of the
21 check, or five dollars (\$5.00), whichever is greater, if the check is the payment of any kind of
22 state public assistance or federal social security benefit;

23 (2) Charge check-cashing fees for personal checks in excess of ten percent (10%) of the
24 face amount of the personal check or five dollars (\$5.00), whichever is greater;

25 (3) Charge check-cashing fees in excess of five percent (5%) of the face amount of the
26 check or five dollars (\$5.00), whichever is greater, for all other checks; or

27 (4) ~~Charge deferred deposit transaction fees in excess of ten percent (10%) of the amount~~
28 ~~of funds advanced.~~

29 **19-14.4-5. Posting of charges -- Endorsement -- Receipt.**

30 (a) In every location licensed pursuant to this chapter, there shall be at all times posted, in
31 a conspicuous place within the licensed premises, a complete and unambiguous schedule of all
32 fees for cashing checks, ~~deferred deposit transactions~~ expressed as ~~both~~ a dollar amount ~~and an~~
33 ~~annual percentage rate~~, and the initial issuance of any identification card.

34 (b) Before a licensee shall deposit, with any regulated institution or other insured-deposit-

1 taking institution organized under the laws of the United States, a check cashed by the licensee,
2 the check must be endorsed with the name under which the licensee is doing business and must
3 include the words "licensed check cashing services".

4 (c) The licensee shall provide a receipt for each transaction for the benefit of a customer.

5 (d) Each check casher shall also post a list of valid identification that is acceptable in lieu
6 of identification provided by the check casher. The information required by this section shall be
7 clear, legible, and in letters not less than one-half (1/2) inch in height. The information shall be
8 posted in a conspicuous location in the unobstructed view of the public within the check casher's
9 premises. Failure to post information as required by this section, or the imposition of fees or
10 identification requirements contrary to the information posted, shall constitute a deceptive trade
11 practice under chapter 13.1 of title 6.

12 SECTION 5. Section 19-14.4-5.1 of the General Laws in Chapter 19-14.4 entitled
13 "Check Cashing" is hereby repealed.

14 ~~**19-14.4-5.1. Customer checks -- Deferred deposits.**~~

15 ~~(a) A check casher may defer the deposit of a personal check written by a customer for a~~
16 ~~term of no less than thirteen (13) days, pursuant to the provisions of this section. The face amount~~
17 ~~of the check shall not exceed five hundred dollars (\$500).~~

18 ~~(b) Each deferred deposit shall be made pursuant to a written agreement that has been~~
19 ~~signed by the customer and by the check casher or an authorized representative of the check~~
20 ~~casher. The written agreement shall contain a statement of the total amount of any fees charged~~
21 ~~for the deferred deposit, expressed both in United States currency and as an annual percentage~~
22 ~~rate (APR), as required by federal regulations. The written agreement shall authorize the check~~
23 ~~casher to defer deposit of the personal check until a specific date no less than thirteen (13) days~~
24 ~~from the date the written agreement was signed and executed. The written agreement shall not~~
25 ~~permit the check casher to accept collateral.~~

26 ~~(c) A rollover is an extension or deferral of the payment due date of a deferred deposit~~
27 ~~transaction for the payment of only an additional fee.~~

28 ~~(d) The maximum amount of a single customer's check is five hundred dollars (\$500).~~

29 ~~(e) The maximum aggregate amount of concurrently outstanding checks held by the~~
30 ~~licensee or its affiliate from the same customer is five hundred dollars (\$500).~~

31 ~~(f) The maximum number of concurrently outstanding checks held by the licensee or its~~
32 ~~affiliates from the same customer is three (3).~~

33 ~~(g) The maximum number of rollovers permitted is one.~~

34 ~~(h) The check casher shall give a duplicate original of the agreement to the customer at~~

1 ~~the time of the transaction.~~

2 SECTION 6. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO FINANCIAL INSTITUTIONS - SMALL LOAN LENDERS

- 1 This act would repeal provisions of the general laws allowing deferred deposit providers,
- 2 also known as "payday lenders."
- 3 This act would take effect upon passage.

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