

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2006

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A N A C T

RELATING TO FINANCIAL INSTITUTIONS -- LENDERS AND LOAN BROKERS

Introduced By: Representatives McCauley, McHugh, Kennedy, Almeida, and Lima

Date Introduced: February 28, 2006

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 19-14-1, 19-14-2, 19-14-3, 19-14-4, 19-14-5, 19-14-6, 19-14-9,
2 19-14-22, and 19-14-26 of the General Laws in Chapter 19-14 entitled "Licensed Activities" are
3 hereby amended to read as follows:

4 **19-14-1. Definitions.** -- For purposes of this chapter and chapters 14.1, 14.2, 14.3, 14.4,
5 14.6 and 14.7 of this title:

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

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

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

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

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

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

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

5 (C) The loan closes within this state; ~~or~~

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

7 or

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

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

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

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

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

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

24 (5) "Licensee" means an entity licensed under this chapter;

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

26 (i) Loans secured by mortgages;

27 (ii) Insurance premium finance agreements;

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

30 (iv) Educational loans;

31 (v) Any other advance of money; or

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

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

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

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

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

12 (iii) The loan closes within this state; ~~or~~

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

14 or

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (20) "Credit counseling service" means a person or corporation that provides DAMP
19 service to consumers, usually for a fee, contribution, or other consideration;

20 (21) "Debt Management plan (DAMP)" means a program whereby money is received
21 from a consumer by the credit counseling service for the purpose of distributing that money to
22 one or more creditors of the consumer in full or partial payment of the consumer's obligation;

23 (22) "Nonprofit organization" means a corporation qualifying as a 26 O.K. section ~~50~~
24 501(c)(3) nonprofit organization, in the operation of which no member, director, officer, partner,
25 employee, agent, or other affiliated person profits financially other than receiving reasonable
26 salaries if applicable, and which provides debt counseling services for individuals at no cost or a
27 cost not exceeding that required to defray bona fide expenses in order to provide the services; and

28 (23) "Joint control agent" means any person engaged in the business of receiving money
29 or other property for disbursement or use in payment of the cost of labor, material services, permits,
30 fees, or other items of expense incurred in the construction of improvements upon real property.

31 (24) "Loan originator" means a natural person employee of a lender or loan broker or
32 independent contractor who is acting as a lender or loan broker that is required to be licensed
33 under R.I. general laws section 19-14-1 et seq., and who for or with the expectation of a fee,
34 commission or other valuable consideration and whose job responsibilities include direct contact

1 with applicants during the mortgage loan application process or mortgage loan pre-approval
2 process, solicits, negotiates, acquires, arranges or makes mortgage loans.

3 (25) "Solicit" shall mean the act of solicitation.

4 (26) "Solicitation" shall mean an effectuation, procurement, delivery, offer, advertisement
5 of a loan. Loan solicitation also includes providing or accepting loan applications and assisting
6 persons in completing loan applications and/or advising, conferring, or informing anyone
7 regarding the benefits, terms and/or conditions of a loan product or service.

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

15 (A) the providing of title services, including title searches, title examinations, abstract
16 preparation insurability determinations, and the issuance of title commitments and title insurance
17 policies when performed by a licensed title attorney or licensed title insurance company;

18 (B) rendering of services by a licensed attorney for the purposes of conducting loan
19 closing preparing loan documents, including notarization, delivery and recordation;

20 (C) rendering of credit reports by an authorized credit reporting agency; and

21 (D) rendering of appraisal services by a licensed appraiser.

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

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

31 **19-14-2. Licenses required.** – (a) No person shall engage within this state in the business
32 of: (1) making or funding loans or acting as a lender or small loan lender; (2) brokering loans or
33 acting as a loan broker; (3) selling checks for a fee or other consideration; (4) cashing checks for
34 a fee or other consideration which includes any premium charged for the sale of goods in excess

1 of the cash price of the goods; (5) providing electronic money transfers for a fee or other
2 consideration; ~~or~~ (6) providing debt management plan(s); or performing the duties of a loan
3 originator without first obtaining a license from the director or the director's designee. The
4 licensing requirement for any person providing debt management plans shall apply to all persons,
5 without regard for state of incorporation or a physical presence in this state, who initiate or
6 service debt management plans for residents of this state. Special exemptions from licensing for
7 each activity are contained in other chapters in this title.

8 (b) No lender, small loan lender or loan broker licensee shall employ or retain a loan
9 originator without first licensing such originator under this chapter. No individual may act as a
10 loan originator without being licensed, or act as a loan originator for more than one person. The
11 license of a loan originator is not effective during any period when such loan originator is not
12 associated with a lender, small loan lender or loan broker licensee.

13 (c) Each loan negotiated, solicited, placed, found or made without a license as required in
14 subsection (a) of this section shall constitute a separate violation for purpose of this chapter.

15 (d) No person engaged in the business of making or brokering loans in this state, whether
16 licensed in accordance with the provisions of this chapter, or exempt from licensing, shall accept
17 applications or referral of applicants from, or pay a fee to, any lender, small loan lender, loan
18 broker or loan originator who is required to be licensed or registered under said sections but is not
19 licensed to act as such by the director or the director's designee. Each lender, small loan lender or
20 loan broker shall exercise due diligence in determining if a lender, small loan lender, loan broker
21 or loan originator is licensed by the director or the director's designee.

22 **19-14-3. Application for license.** -- (a) Application for a license shall be made in writing
23 under oath in a form to be provided by the director or the director's designee. The applicant at the
24 time of making application shall pay to the director or the director's designee the sum of one half
25 (1/2) of the annual license fee as a fee for investigating the application. If the application for
26 license is approved, the applicant shall pay a fee equal to the annual license fee as provided in this
27 chapter. The license shall be continuous and the license fee shall cover the period through March
28 31 of each year. Any application approved after January 1 of any given year shall pay one half
29 (1/2) of the annual license fee for the period ending March 31 of that year.

30 (b) Only a nonprofit organization may apply for a license to provide debt management
31 plan(s) under this title. Any nonprofit organization desiring to obtain a license shall file with the
32 department of business regulation an application in writing under oath providing the following
33 information:

34 (1) Proof of nonprofit status as determined by being designated under the United States

1 Internal Revenue Code as section 501(-c-)(-3-).

2 (2) Proof of a separate trust account with a federally-insured financial institution for the
3 handling of client funds.

4 (3) Proof of counselor certification through a bona fide third-party certification provider
5 that demonstrates the competence of counselors providing consumer assistance.

6 (4) Proof of a board of directors, a majority of which does not include individuals for
7 whom such a position could pose a conflict with the mission of the organization, such as creditors
8 and creditors' representatives: bankruptcy attorneys, and others who would have a direct stake in
9 the outcome of the counseling process. The board must have a working majority that is not
10 comprised of officers of the company or their relatives.

11 (5) Proof of agency accreditation provided by a bona fide third-party accreditation body
12 such as the council on accreditation or as approved by the director. Such accreditation shall
13 include sector certification that insures compliance to industry standards and best practices and
14 corporate governance.

15 (6) A copy of an annual audit by an independent certified public accountant, which such
16 audit taking place within six (6) months of the close of the agency's fiscal year.

17 (c) The director shall require a background report prepared by an independent licensed
18 private investigation firm for every applicant for a license to engage in the business of providing
19 debt management plan(s), including said applicant's principal owners and officers. The cost of
20 such report shall be borne by the applicant. The director may conduct an additional inquiry or
21 investigation to determine the applicant's fitness to be licensed or continue to be licensed.

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

24 (e) An applicant for issuance of a loan originator license shall file with the director or
25 director's designee evidence acceptable to the director or the directors designee that said applicant
26 has:

27 (i) Successfully completed an entry level training course relative to state and federal
28 statutes, rules and regulations applicable to loans, mortgages, real property, deeds and contracts
29 consisting of a minimum of twelve (12) hours with an approved nationally recognized training
30 facility, or in house as determined by the director or the director's designee; or

31 (ii) If the applicant has been employed as a loan originator on March 31, 2007 in this
32 state, the applicant must file with the director or the director's designee evidence of employment
33 and shall be deemed to meet the requirements set forth in subsection 19-14-3(e)(i).

34 (iii) 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 five (5) or more years immediately preceding applicant's employment as a loan
3 originator, applicant shall file an application for a loan originator license on or before his or her
4 date of employment as a loan originator and shall file evidence acceptable to the director or the
5 director's designee that applicant has completed a minimum of twelve (12) hours of continuing
6 education relative to state and federal statutes, rules and regulations applicable to loans,
7 mortgages, real property, deeds and contracts within twelve (12) months of his or her
8 employment as a loan originator by an approved nationally recognized training facility or other
9 facility, as determined by the director or the director's designee.

10 (f) The application for a lender, small loan lender, or loan broker license shall include an
11 application for a license for each loan originator or prospective loan originator of the applicant.

12 **19-14-4. Annual fee.** -- (a) Each licensee shall pay an annual license fee as follows:

13 (1) Each small loan lender license and each branch certificate, the sum of five hundred
14 fifty dollars (\$550);

15 (2) Each loan broker license and each branch certificate, the sum of five hundred fifty
16 dollars (\$550);

17 (3) Each lender license and each branch certificate, the sum of one thousand one hundred
18 dollars (\$1,100);

19 (4) Each sale of checks license, the sum of three hundred dollars (\$300);

20 (5) Each check cashing license, the sum of three hundred dollars (\$300);

21 (6) Each electronic money transfer license, the sum of three hundred dollars (\$300); ~~and~~

22 (7) Each debt management plan license, the sum of two hundred dollars (\$200). ; and

23 (8) Each loan originator license, the sum of two hundred dollars (\$200).

24 (b) Any licensee who shall not pay the annual fee by March 31 of each year shall be
25 subject to a daily penalty of twenty-five dollars (\$25) per day, subject to a maximum of seven
26 hundred fifty dollars (\$750). The penalty shall be paid to the director to and for the use of the
27 state. The penalty may be waived for good cause by the director or the director's designee, upon
28 written request.

29 **19-14-5. Minimum capital.** -- Each licensee, excluding loan originators licensed
30 pursuant to an application for license filed after June 30, 1995, shall maintain the following
31 minimum net worth to be evidenced in accordance with regulations promulgated by the director
32 or the director's designee.

33 (1) Small loan lenders, the sum of twenty-five thousand dollars (\$25,000);

34 (2) Loan brokers, the sum of ten thousand dollars (\$10,000);

1 (3) Lenders, the sum of one hundred thousand dollars (\$100,000); and

2 (4) Sale of checks, the sum of fifty thousand dollars (\$50,000).

3 **19-14-6. Bond of applicant.** -- (a) An applicant for any license shall file with the director
4 or the director's designee a bond to be approved by him or her in which the applicant shall be the
5 obligor.

6 (b) The amount of the bond shall be as follows:

7 (1) Small loan lenders, the sum of ten thousand dollars (\$10,000);

8 (2) Loan brokers, the sum of ten thousand dollars (\$10,000) plus five thousand dollars
9 (\$5,000) for each loan originator subject to a maximum amount of one hundred fifty thousand
10 dollars (\$150,000);

11 (3) Lenders, the sum of twenty-five thousand dollars (\$25,000) plus five thousand
12 dollars (\$5,000) for each loan originator subject to a maximum amount of one hundred fifty
13 thousand dollars (\$150,000);

14 (4) Sale of checks and electronic money transfer licensees, the sum of fifty thousand
15 dollars (\$50,000) subject to a maximum of one hundred and fifty thousand dollars (\$150,000)
16 when aggregated with agent locations;

17 (5) Check cashing licensees who accept checks for collection with deferred payment, the
18 sum of fifty thousand dollars (\$50,000) subject to a maximum of one hundred and fifty thousand
19 dollars (\$150,000) when aggregated with agent locations;

20 (6) Foreign exchange licensees, the sum of ten thousand dollars (\$10,000);

21 (7) Each branch or agent location of a licensee, the sum of five thousand dollars
22 (\$5,000); or

23 (8) Each debt management plan licensee, the sum equal to the amount of moneys
24 received from debtors and on hand at any time, but not less than twenty thousand dollars
25 (\$20,000) with one or more insurers, approved by the director, which does not exceed the sum in
26 the aggregate.

27 (c) The bond shall run to the state for the use of the state and of any person who may
28 have cause of action against the obligor of the bond under the provisions of this title. The bond
29 shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of
30 this title and of all rules and regulations lawfully made, and the obligor will pay to the state and to
31 any person any and all money that may become due or owing to the state or to the person from
32 the obligor under and by virtue of the provisions of this title.

33 (d) The provisions of subsection (b)(6) of this section shall not apply to any foreign
34 exchange business holding a valid electronic money transfer license issued pursuant to section

1 19-14-1 et seq., that has filed with the division of banking the bond required by subsections (b)(4)
2 and (b)(7) of this section.

3 (e) The bond shall remain in force and effect until the surety is released from liability by
4 the director or the director's designee or until the bond is cancelled by the surety. The surety may
5 cancel the bond and be released from further liability under the bond upon receipt by the director
6 or the director's designee of written notice of the cancellation of the bond at least thirty (30) days
7 in advance of the cancellation of the bond. The cancellation shall not affect any liability incurred
8 or accrued under the bond before the termination of the thirty (30) day period. Upon receipt of
9 any notice of cancellation, the director shall provide written notice to the licensee.

10 **19-14-9. Contents of license -- Posting.** -- The license or branch certificate shall contain
11 any information that the director or the director's designee shall require, including the type of
12 activity authorized. The license or branch certificate shall be kept conspicuously posted in the
13 place of business of the licensee. The loan originator license must be carried by each loan
14 originator and upon request of the applicant presented to each applicant or potential applicant
15 with whom the loan originator transacts business in an in person meeting. When dealing with an
16 applicant or potential applicant other than in an in-person meeting, the loan originator shall, upon
17 request, disclose the loan originator's license number to the applicant and the fact that the loan
18 originator is licensed by this state. Any licensee who shall lose, misplace or mutilate the license
19 or branch certificate shall pay a replacement fee of ~~one hundred dollars (\$100)~~ fifty dollars
20 (\$50.00) to the director for the use of the state.

21 **19-14-22. Reporting requirements.** -- (a) Each licensee shall annually on or before
22 March 31 file a report with the director or the director's designee giving any relevant information
23 that the director or the director's designee may reasonably require concerning the business and
24 operations during the preceding calendar year of each licensed place of business conducted by the
25 licensee within the state. The report shall be made under oath and shall be in a form prescribed by
26 the director or the director's designee. At the time of filing each report, the sum of fifty-five
27 dollars (\$55.00) per license and fifty-five dollars (\$55.00) per branch certificate shall be paid by
28 the licensee to the director for the use of the state. Any licensee who shall delay transmission of
29 any report required by the provisions of this title beyond the limit, unless additional time is
30 granted, in writing, for good cause, by the director or the director's designee, shall pay a penalty
31 of twenty-five dollars (\$25) for each day of the delay.

32 (b) Any licensee shall, within twenty-four (24) hours after actual knowledge, notify the
33 director or the director's designee, in writing, of the occurrence of any of the following events: the
34 institution of bankruptcy, receivership, reorganization or insolvency proceedings regarding a

1 licensee, the institution of any adverse government action against a licensee, or any felony
2 indictment or conviction of any licensee or any officers, directors, owners, employees, members
3 or partners thereof, as the case may be.

4 (c) Each loan originator licensee shall annually on or before March 31 file with the
5 director or the director's designee evidence acceptable to the director or the director's designee
6 that said loan originator licensee has successfully completed during the twelve (12) months
7 immediately preceding March 31st a minimum of four (4) hours of continuing education relative
8 to state and federal statutes, rules and regulations applicable to loans, mortgages, real property,
9 deeds and contracts, provided by an approved nationally recognized training facility, or other
10 facility including in-house program as determined by the director or the director's designee.

11 (d) Both the loan originator and the licensee shall promptly notify the director or the
12 director's designee, in writing, within five (5) business days of the termination of employment or
13 services of a loan originator.

14 **19-14-26. Penalty for violations.** -- Any person and the several members, officers,
15 directors, agents, and employees of any person who violate or participate in the violation of any
16 of the applicable provisions of this title, or any regulation promulgated under this title, is guilty of
17 a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand
18 dollars (\$1,000) or by imprisonment not exceeding one year, or both. Each violation constitutes a
19 separate offense. Complaints under the provisions of this chapter may be made by the director or
20 the director's designee and shall not be required to give surety for costs. The attorney general
21 shall prosecute all complaints under this chapter.

22 (b) The director or the director's designee is authorized to enforce a penalty in the amount
23 of two hundred fifty dollars (\$250) per loan transaction against any licensee who employs any
24 person operation as a loan originator without having obtained a license pursuant to this chapter.

25 SECTION 2. Sections 19-14.1-4 and 19-14.1-5 of the General Laws in Chapter 19-14.1
26 entitled "Lenders and Loan Brokers" are hereby amended to read as follows:

27 **19-14.1-4. Documents delivered to borrower -- Advance payments -- Release of**
28 **security.** -- Every lender or loan broker, as applicable, who is the holder of any note shall:

29 (1) Give to any borrower or the borrower's agent making a loan payment a plain and
30 complete receipt for all payments on the loan at the time the payment is made in person at the
31 lender's or loan broker's office;

32 (2) Except for an open-end loan, upon written request from the borrower, the holder of a
33 subordinate mortgage loan instrument shall deliver to the borrower within ten (10) days from
34 receipt of a written request a statement of the borrower's account showing the date and amount of

1 all payments made or credited to the account and the total unpaid balance. Not more than two (2)
2 such statements shall be required in any twelve (12) month period;

3 (3) Permit payment to be made in advance in any amount on any contract of loan at any
4 time, but the lender or loan broker may apply the payment first to all interest in full at the agreed
5 rate and other permitted charges, up to the date of the payment. Any broker fees, points or
6 origination fees shall not be subject to any required refund;

7 (4) Upon repayment of the loan in full, mark indelibly every obligation and security
8 signed by the borrower with the word "paid" or "canceled" and release any mortgage, restore any
9 pledge, cancel and return any note or a copy of the note, and cancel and return any assignment or
10 a copy of the assignment given to the lender or loan broker by the borrower;

11 (5) Issue mortgage discharges in accordance with the provision of chapter 26 of title 34;
12 and

13 (6) In the case of educational loans, deliver to the borrower a written statement which
14 discloses the name and address of the borrower and licensee, the name of each payee to whom
15 disbursements will be made, the date and total amount of the loan commitment, a description of
16 the payment schedule, the amount of any insurance procured by the lender with a summary of the
17 nature and extent of coverage, the total amount of all insurance premiums to be collected by the
18 licensee, the schedule of any disbursements to be made to the borrower and of the method by
19 which the schedule of any disbursements to an educational institution will be determined.

20 [\(7\) Comply with all applicable federal laws, rules and regulations, as amended, including](#)
21 [without limitation the federal real estate settlement procedures act and regulations, the equal](#)
22 [credit opportunity act and regulations, fair credit reporting act and regulations and, the truth in](#)
23 [lending act and regulations.](#)

24 **19-14.1-5. Instrument evidencing loan, contents.** – (a) No loan document shall contain:

25 (1) Any acceleration clause under which any part or all of the unpaid balance of the
26 obligation not yet matured may be declared due and payable because the holder deems himself or
27 herself to be insecure;

28 (2) Any power of attorney to confess judgment or any other power of attorney except a
29 statutory power of sale;

30 (3) Any provision whereby the debtor waives any rights accruing to him or her under the
31 provisions of this title or any other law expressly prohibiting such waiver;

32 (4) Except for a change in the payment schedule as a result of the borrower's default or
33 delinquency, or pursuant to an agreement involving a court proceeding, any requirement that
34 more than one installment be payable in any one installment period; ~~or~~

1 (5) Any assignment of or order for the payment of any salary, wages, commission or
2 other compensation for services, or any part thereof, earned or to be earned.

3 (b) Each lender, small loan lender or loan broker shall exercise due diligence in
4 confirming compliance with applicable state/federal statutes and/or regulations at all phases (pre-
5 application, post-application, pre-closing, post-closing) of a transaction.

6 SECTION 3. Implementation of that part of this act pertaining to loan originator licensing
7 shall be subject to and conditioned upon:

8 (I) an appropriation to the department in Fiscal Year ("FY") 2007 in an amount necessary
9 to fund one principal licensing examiner position and one principal systems analyst position;

10 (ii) the increase of the department's Full Time Employees ("FTEs") in FY 2007 by two
11 (2) positions more than the department's FTE level for FY 2006;

12 (iii) the hiring of staff by the department to fill said positions; and

13 (iv) certification by the director or the director's designee that there is adequate and
14 appropriate departmental staff to carryout its regulatory obligations under this act. It is the
15 legislative intent to insure that the department continues to have adequate staffing and resources
16 necessary in the future to carryout its obligations under the act to license loan originators as those
17 evolve an/or increase. To the extent that said FTEs are not funded in any subsequent year and the
18 director determines that said FTEs are necessary to carry out the department's obligations under
19 the act, the director shall be authorized to refuse to accept loan originator applications sought to
20 be filed under section 19-14-1 et seq. Any suspension and/or interruption in the processing of
21 loan originator applications by the department shall not excuse the licensed loan broker or lender
22 from ensuring that all practices performed by its loan originators as defined herein are in
23 compliance with all state and federal statutory and regulatory requirements in lending and/or loan
24 brokering transactions with the exception of licensing requirements of loan originators described
25 herein.

26 SECTION 4. Sections 1 and 3 of this act shall take effect upon passage. Subject to the
27 provisions of section 3 of this act, section 2 of this act shall take effect on March 31, 2007.

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LC02649/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO FINANCIAL INSTITUTIONS -- LENDERS AND LOAN BROKERS

1 This act would require loan originators to be licensed by the state in order to conduct
2 business, amend or add definitions for certain terms or phrases, and clarify certain compliance
3 matters. Sections 1 and 3 of this act would take effect upon passage. Subject to the provisions of
4 section 3 of this act, section 2 of this act would take effect on March 31, 2007.

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LC02649/SUB A
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