

LC01012

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2006

A N A C T

RELATING TO LICENSED ACTIVITIES - MORTGAGE ORGANIZATIONS

Introduced By: Senators Walaska, and Blais

Date Introduced: February 02, 2006

Referred To: Senate Financial, Technology, Regulatory

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 19-14-1, 19-14-2, 19-14-4, 19-14-5 and 19-14-6 of the General
2 Laws in Chapter 19-14 entitled "Licensed Activities" are hereby amended to read as follows:
3 **19-14-1. Definitions.** -- For purposes of this chapter and chapters 14.1, 14.2, 14.3, 14.4,
4 14.6 and 14.7 of this title:

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

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

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

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

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

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

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

4 (C) The loan closes within this state; or

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

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

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

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

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

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

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

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

23 (i) Loans secured by mortgages;

24 (ii) Insurance premium finance agreements;

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

27 (iv) Educational loans;

28 (v) Any other advance of money; or

29 (vi) Any transaction such as those commonly known as "pay day loans," "pay day
30 advances," or "deferred presentment loans," in which a cash advance is made to a customer in
31 exchange for the customer's personal check, or in exchange for the customer's authorization to
32 debit the customer's deposit account, and where the parties agree either that the check will not be
33 cashed or deposited, or that customer's deposit account will not be debited, until a designated
34 future date.

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

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

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

9 (iii) The loan closes within this state; or

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

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

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

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

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

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

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

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

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

30 (16) "Deferred deposit transaction" means any transaction such as those commonly
31 known as "pay-day loans," "pay-day advances," or "deferred presentment loans" in which a cash
32 advance is made to a customer in exchange for the customer's personal check or in exchange for
33 the customer's authorization to debit the customer's deposit account and where the parties agree
34 either that the check will not be cashed or deposited, or that the customer's deposit account will

not be debited until a designated future date;

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

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

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

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

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

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

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

(24) "Loan originator" means an individual who is an employee of a lender, and whose job responsibilities include direct contact with borrowers during the loan origination process, which may include soliciting, negotiating, acquiring, arranging or making mortgage loans for others, obtaining personal or financial information, assisting with the preparation of loan applications or other documents, quoting loan rates or terms, or providing required disclosures.

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

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

8 **19-14-4. Annual fee.** -- (a) Each licensee shall pay an annual license fee as follows:

9 (1) Each small ban lender license and each branch certificate, the sum of five hundred
10 fifty dollars (\$550);

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

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

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

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

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

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

19 (8) Each mortgage originator license, the sum of two hundred fifty dollars (\$250).

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

25 **19-14-5. Minimum capital.** -- Each licensee, excluding loan originators, licensed
26 pursuant to an application for license filed after June 30, 1995, shall maintain the following
27 minimum net worth to be evidenced in accordance with regulations promulgated by the director
28 or the director's designee.

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

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

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

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

33 **19-14-6. Bond of applicant.** -- (a) An applicant for any license ,except that of loan
34 originator shall file with the director or the director's designee a bond to be approved by him or

1 her in which the applicant shall be the obligor.

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

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

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

5 (3) Lenders, the sum of twenty-five thousand dollars (\$25,000);

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

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

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

13 (7) Each branch or agent location of a licensee, the sum of five thousand dollars
14 (\$5,000); or

15 (8) Each debt management plan licensee, the sum equal to the amount of moneys
16 received from debtors and on hand at any time, but not less than twenty thousand dollars
17 (\$20,000) with one or more insurers, approved by the director, which does not exceed the sum in
18 the aggregate.

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

25 (d) The provisions of subsection (b)(6) of this section shall not apply to any foreign
26 exchange business holding a valid electronic money transfer license issued pursuant to section
27 19-14-1 et seq., that has filed with the division of banking the bond required by subsections (b)(4)
28 and (b)(7) of this section.

29 (e) The bond shall remain in force and effect until the surety is released from liability by
30 the director or the director's designee or until the bond is cancelled by the surety. The surety may
31 cancel the bond and be released from further liability under the bond upon receipt by the director
32 or the director's designee of written notice of the cancellation of the bond at least thirty (30) days
33 in advance of the cancellation of the bond. The cancellation shall not affect any liability incurred
34 or accrued under the bond before the termination of the thirty (30) day period. Upon receipt of

- 1 any notice of cancellation, the director shall provide written notice to the licensee.
- 2 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO LICENSED ACTIVITIES - MORTGAGE ORGANIZATIONS

- 1 This act would require loan originators to be licensed by the state in order to conduct
2 business.
3 This act would take effect upon passage.

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