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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO FINANCIAL INSTITUTIONS - DEFERRED PRESENTMENT
TRANSACTIONS

Introduced By: Senator Joshua Miller

Date Introduced: March 28, 2012

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

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

3 **19-14-1. Definitions.** -- Unless otherwise specified, the following terms shall have the
4 following meanings throughout chapters 14, 14.1, 14.2, 14.3, 14.4, 14.6, 14.8, ~~and~~ 14.10 and
5 14.11 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

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 any person 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) Deferred presentment transactions as defined in this section. ~~Any transaction such as~~
34 ~~those commonly known as "pay day loans," "pay day advances," or "deferred presentment loans,"~~

~~1 in which a cash advance is made to a customer in exchange for the customer's personal check, or
2 in exchange for the customer's authorization to debit the customer's deposit account, and where
3 the parties agree either that the check will not be cashed or deposited, or that customer's deposit
4 account will not be debited, until a designated 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~~ presentment transaction" means any transaction such as those
3 commonly known as "pay-day loans," or "pay-day advances," ~~or "deferred presentment loans" in~~
4 ~~which a cash advance is made to a customer in exchange for the customer's personal check or in~~
5 ~~exchange for the customer's authorization to debit the customer's deposit account and where the~~
6 ~~parties agree either that the check will not be cashed or deposited, or that the customer's deposit~~
7 ~~account will not be debited until a designated future date~~ for providing currency or a payment
8 instrument in exchange for a drawer's check and agreeing to hold the check for a deferment
9 period;

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

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

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

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

25 (21) "Mortgage loan originator" has the same meaning set forth in subdivision 19-14.10-
26 3(6);

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

29 (23) "Loan solicitation" shall mean an effectuation, procurement, delivery and offer, and
30 advertisement of a loan. Loan solicitation also includes providing or accepting loan applications
31 and assisting persons in completing loan applications and/or advising, conferring, or informing
32 anyone regarding the benefits, terms and/or conditions of a loan product or service. Loan
33 solicitation does not include loan processing or loan underwriting as defined in this section. Loan
34 solicitation does not include telemarketing which is defined for purposes of this section to mean

1 contacting a person by telephone with the intention of collecting such person's name, address and
2 telephone number for the sole purpose of allowing a mortgage loan originator to fulfill a loan
3 inquiry;

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

11 (i) Providing loan closing services;

12 (ii) Rendering of credit reports by an authorized credit reporting agency; and

13 (iii) Rendering of appraisal services.

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

20 (26) "Negotiates" shall mean, with respect to a loan, to confer directly with or offer
21 advice directly to a loan applicant or prospective loan applicant for a loan product or service
22 concerning any of the substantive benefits, terms, or conditions of the loan product or service;

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

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

33 (29) "Oversight and supervision of the licensee" shall mean that the licensee provides
34 training to the employee, sets the employee's hours of work, and provides the employee with the

1 equipment and physical premises required to perform the employee's duties;

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

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

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

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

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

21 (32) "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 (33) "Negative equity" means the difference between the value of an asset and the
27 outstanding portion of the loan taken out to pay for the asset, when the latter exceeds the former
28 amount.

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

34 (35) "Deferred presentment provider" means a person engaged in providing deferred

1 [presentment transactions.](#)

2 **19-14-2. Licenses required.** -- (a) No person shall engage within this state in the
3 business of: (1) making or funding loans or acting as a lender or small loan lender; (2) brokering
4 loans or acting as a loan broker; (3) selling checks for a fee or other consideration; (4) cashing
5 checks for a fee or other consideration which includes any premium charged for the sale of goods
6 in excess of the cash price of the goods; (5) providing electronic money transfers for a fee or
7 other consideration; (6) providing debt-management services; ~~or~~ (7) performing the duties of a
8 mortgage loan originator without first obtaining a license or registration from the director or the
9 director's designee; [or \(8\) making deferred presentment transactions.](#) The licensing requirement
10 for any person providing debt management plans shall apply to all persons, without regard for
11 state of incorporation or a physical presence in this state, who initiate or service debt management
12 plans for residents of this state. Special exemptions from licensing for each activity are contained
13 in other chapters in this title.

14 (b) No lender or loan broker licensee shall permit an employee to act as a mortgage loan
15 originator without first verifying that such originator is licensed under this chapter. No individual
16 may act as a mortgage loan originator without being licensed, or act as a mortgage loan originator
17 for more than one person. The license of a mortgage loan originator is not effective during any
18 period when such mortgage loan originator is not associated with a lender or loan broker licensee.

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

21 (d) No person engaged in the business of making or brokering loans in this state, whether
22 licensed in accordance with the provisions of this chapter, or exempt from licensing, shall accept
23 applications or referral of applicants from, or pay a fee to, any lender, loan broker or mortgage
24 loan originator who is required to be licensed or registered under said sections but is not licensed
25 to act as such by the director or the director's designee.

26 **19-14-4. Annual fee.** -- (a) Each licensee shall pay an annual license fee as follows:

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

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

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

33 (4) Each sale of checks license, the sum of three hundred sixty dollars (\$360);

34 (5) Each check cashing license, the sum of three hundred sixty dollars (\$360);

1 (6) Each electronic money transfer license, the sum of three hundred sixty dollars
2 (\$360);

3 (7) Each registration to provide debt-management services, the sum of two hundred
4 dollars (\$200); and

5 (8) Each mortgage loan originator license, the sum of one hundred dollars (\$100).

6 (9) Each deferred presentment transaction license, the sum of three hundred sixty dollars
7 (\$360).

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

13 **19-14-6. Bond of applicant.** -- (a) An applicant for any license shall file with the director
14 or the director's designee a bond to be approved by him or her in which the applicant shall be the
15 obligor.

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

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

18 (2) Loan brokers, the sum of twenty thousand dollars (\$20,000);

19 (3) Lenders, the sum of fifty thousand dollars (\$50,000);

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

23 ~~(5) Check-cashing licensees who accept checks for collection with deferred payment, the~~
24 ~~sum of fifty thousand dollars (\$50,000) subject to a maximum of one hundred and fifty thousand~~
25 ~~dollars (\$150,000) when aggregated with agent locations~~ Deferred presentment transaction
26 licensees, the sum of fifty thousand dollars (\$50,000) subject to a maximum of one hundred and
27 fifty thousand dollars (\$150,000) when aggregated with agent locations;

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

29 (7) Each branch or agent location of a licensee, the sum of five thousand dollars
30 (\$5,000); ~~or~~

31 (8) Each debt-management services registrant, the amount provided in section 19-14.8-
32 13; or

33 (c) The bond shall run to the state for the use of the state and of any person who may
34 have cause of action against the obligor of the bond under the provisions of this title. The bond

1 shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of
2 this title and of all rules and regulations lawfully made, and the obligor will pay to the state and to
3 any person any and all money that may become due or owing to the state or to the person from
4 the obligor under and by virtue of the provisions of this title.

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

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

16 SECTION 2. 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.** -- No licensee shall:

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

22 (2) Charge check-cashing fees for personal checks in excess of ~~ten percent (10%)~~ eight
23 percent (8%) of the face amount of the personal check or five dollars (\$5.00), whichever is
24 greater; or

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.

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

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

1 deposit-taking institution organized under the laws of the United States, a check cashed by the
2 licensee, the check must be endorsed with the name under which the licensee is doing business
3 and must 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 which is acceptable in
6 lieu of identification provided by the check casher. The information required by this section shall
7 be 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 cashers'
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 3. 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.** (a) A check casher may defer the~~
15 ~~deposit of a personal check written by a customer for a term of no less than thirteen (13) days,~~
16 ~~pursuant to the provisions of this section. The face amount of the check shall not exceed five~~
17 ~~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 roll over 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 4. Title 19 of the General Laws entitled "FINANCIAL INSTITUTIONS" is
3 hereby amended by adding thereto the following chapter:

4 CHAPTER 14.11

5 DEFERRED PRESENTMENT TRANSACTIONS

6 **19-14.11-1. Short title.** -- This chapter may also be referred to as the "Pay Day Lending
7 Law".

8 **19-14.11-2. Purpose.** -- The purpose of this chapter is to provide enhanced regulation of
9 deferred presentment transactions and prevent fraud, abuse, and other unlawful activity associated
10 with deferred presentment transactions in part by:

11 (1) Providing for sufficient regulatory authority and resources to monitor deferred
12 presentment transactions;

13 (2) Preventing rollovers; and

14 (3) Regulating the allowable fees charged in connection with a deferred presentment
15 transaction.

16 **19-14.11-3. Definitions.** -- For the purposes of this chapter:

17 (1) "Affiliate" means a person who, directly or indirectly, through one or more
18 intermediaries controls, is controlled by, or is under common control with, a deferred presentment
19 provider.

20 (2) "Deferment period" means the number of days a deferred presentment provider agrees
21 to defer depositing, presenting, or redeeming a payment instrument.

22 (3) "Deferred presentment transaction" means a deferred presentment transaction as
23 defined in subdivision 19-14-1(16).

24 (4) "Department" means the department of business regulation.

25 (5) "Director" means the director of the department of business regulation.

26 (6) "Drawer" means a customer who writes a personal check and upon whose account the
27 check is drawn.

28 (7) "Extension of a deferred presentment agreement" means continuing a deferred
29 presentment transaction past the deferment period by having the drawer pay additional fees and
30 the deferred presentment provider continuing to hold the check for another deferment period.

31 (8) "Rollover" means the termination or extension of a deferred presentment agreement
32 by the payment of an additional fee and the continued holding of the check, or the substitution of
33 a new check by the drawer pursuant to a new deferred presentment agreement.

34 (9) "Termination of a deferred presentment agreement" means that the check that is the

1 basis for the agreement is redeemed by the drawer by payment in full in cash, or is deposited and
2 the deferred presentment provider has evidence that such check has cleared. Verification of
3 sufficient funds in the drawer's account by the deferred presentment provider is not sufficient
4 evidence to deem that the deferred deposit transaction is terminated.

5 **19-14.11-4. License and Exemption.** -- A person may not provide deferred presentment
6 transaction services unless the person is licensed pursuant to the provisions of chapter 19-14
7 except that no license to provide deferred presentment transaction services shall be required of
8 any:

9 (1) Regulated institution, bank or credit union organized under the laws of the United
10 States, or subject to written notice with a designated Rhode Island agent for service of process in
11 the form prescribed by the director or the director's designee, of any other state within the United
12 States if the laws of the other state in which such bank or credit union is organized authorizes
13 under conditions not substantially more restrictive than those imposed by the laws of this state, as
14 determined by the director or the director's designee, a financial institution or credit union to
15 engage in the business of deferred presentment transaction services checks in the other state; no
16 bank or credit union duly organized under the laws of another state within the United States may
17 receive deposits, pay checks or lend money from any location within this state unless such bank
18 or credit union has received approval from the director or the director's designee for the
19 establishment of an interstate branch office pursuant to chapter 19-7; or

20 (2) Natural person employee, as defined in subdivision 19-14-1(27), who is employed by
21 a licensee when acting on the licensee's behalf.

22 **19-14.11-5. Requirements for deferred presentment transactions.**-- (1) Each deferred
23 presentment transaction must be documented in a written agreement signed by the deferred
24 presentment provider and the drawer.

25 (2) The deferred presentment transaction agreement must be executed on the day the
26 deferred presentment provider furnishes currency or a payment instrument to the drawer.

27 (3) Each written agreement must, in addition to any information required by rule, contain
28 the following information:

29 (i) The name or trade name, address, and telephone number of the deferred presentment
30 provider and the name and title of the person who signs the agreement on behalf of the provider;

31 (ii) The date the deferred presentment transaction is made;

32 (iii) The amount of the drawer's check;

33 (iv) The length of the deferment period;

34 (v) The last day of the deferment period;

1 (vi) The address and telephone number of the licensed location;
2 (vii) A clear description of the drawer's payment obligations under the deferred
3 presentment transaction; and
4 (viii) The transaction number assigned by the licensed location's database.
5 (4) The deferred presentment provider must furnish a copy of the deferred presentment
6 transaction agreement to the drawer.
7 (5) The face amount of a check taken for deferred presentment may not exceed five
8 hundred dollars (\$500) exclusive of the fees allowed under this section.
9 (6) A deferred presentment provider or its affiliate may not charge fees that exceed ten
10 percent (10%) of the currency or payment instrument provided. However, a verification fee may
11 be charged as provided for in this chapter. The ten percent (10%) fee may not be applied to the
12 verification fee. A deferred presentment provider may charge only those fees specifically
13 authorized in this chapter.
14 (7) The fees authorized by this section may not be collected before the drawer's check is
15 presented or redeemed.
16 (8) A deferred presentment agreement may not be for a term longer than thirty-one (31)
17 days nor less than seven (7) days.
18 (9) A deferred presentment provider may not require a drawer to provide any additional
19 security for the deferred presentment transaction or any extension or require the drawer to provide
20 any additional guaranty from another person.
21 (10) A deferred presentment provider may not include any of the following provisions in
22 a deferred provider agreement:
23 (i) A hold harmless clause;
24 (ii) A confession of judgment clause;
25 (iii) Any assignment of or order for payment of wages or other compensation for
26 services;
27 (iv) A provision in which the drawer agrees not to assert any claim or defense arising out
28 of the agreement; or
29 (v) A waiver of any provision of this section.
30 (11) A deferred presentment provider shall immediately provide the drawer with the full
31 amount of any check to be held, less only the fees allowed under this section.
32 (12) The deferred presentment agreement and the drawer's check must bear the same
33 date, and the number of days of the deferment period shall be calculated from that date. The
34 deferred presentment provider and the drawer may not alter or delete the date on any written

1 agreement or check held by the deferred presentment provider.

2 (13) For each deferred presentment transaction, the deferred presentment provider must
3 comply with the disclosure requirements of 12 C.F.R., part 226, relating to the Federal Truth-in-
4 Lending Act, and Regulation Z of the Board of Governors of the Federal Reserve Board as may
5 be amended from time to time. A copy of the disclosure must be provided to the drawer at the
6 time the deferred presentment transaction is initiated.

7 (14) A deferred presentment provider or its affiliate may not accept or hold an undated
8 check or a check dated on a date other than the date on which the deferred presentment provider
9 agreed to hold the check and signed the deferred presentment transaction agreement.

10 (15) A deferred presentment provider must hold the drawer's check for the agreed
11 number of days, unless the drawer chooses to redeem the check before the presentment date.

12 (16) Proceeds in a deferred presentment transaction may be made to the drawer in the
13 form of the deferred presentment provider's payment instrument if the deferred presentment
14 provider is registered under part II; however, an additional fee may not be charged by a deferred
15 presentment provider or its affiliate for issuing or cashing the deferred presentment provider's
16 payment instrument.

17 (17) A deferred presentment provider may not require the drawer to accept its payment
18 instrument in lieu of currency.

19 (18) A deferred presentment provider or its affiliate may not engage in the rollover of a
20 deferred presentment agreement. A deferred presentment provider may not redeem, extend, or
21 otherwise consolidate a deferred presentment agreement with the proceeds of another deferred
22 presentment transaction made by the same or an affiliate.

23 (19) A deferred presentment provider may not enter into a deferred presentment
24 transaction with a drawer who has an outstanding deferred presentment transaction with that
25 provider or with any other deferred presentment provider, or with a person whose previous
26 deferred presentment transaction with that provider or with any other provider has been
27 terminated for less than twenty-four (24) hours. The deferred presentment provider must verify
28 such information as follows:

29 (i) The deferred presentment provider shall maintain a common database and shall verify
30 whether the provider or an affiliate has an outstanding deferred presentment transaction with a
31 particular person or has terminated a transaction with that person within the previous twenty-four
32 (24) hours.

33 (ii) The deferred presentment provider shall access the database established pursuant to
34 subdivision (23) and shall verify whether any other deferred presentment provider has an

1 outstanding deferred presentment transaction with a particular person or has terminated a
2 transaction with that person within the previous twenty-four (24) hours. If a provider has not
3 established a database, the deferred presentment provider may rely upon the written verification
4 of the drawer as provided in subdivision (20).

5 (20) A deferred presentment provider shall provide the following notice in a prominent
6 place on each deferred presentment agreement in at least fourteen (14) point type in substantially
7 the following form and must obtain the signature of the drawer where indicated:

8 NOTICE

9 STATE LAW PROHIBITS YOU FROM HAVING MORE THAN ONE DEFERRED
10 PRESENTMENT AGREEMENT AT ANY ONE TIME. STATE LAW ALSO PROHIBITS
11 YOU FROM ENTERING INTO A DEFERRED PRESENTMENT AGREEMENT WITHIN
12 TWENTY-FOUR (24) HOURS AFTER TERMINATING ANY PREVIOUS DEFERRED
13 PRESENTMENT AGREEMENT. FAILURE TO OBEY THIS LAW COULD CREATE
14 SEVERE FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY.

15 YOU MUST SIGN THE FOLLOWING STATEMENT:

16 I DO NOT HAVE AN OUTSTANDING DEFERRED PRESENTMENT AGREEMENT
17 WITH ANY DEFERRED PRESENTMENT PROVIDER AT THIS TIME. I HAVE NOT
18 TERMINATED A DEFERRED PRESENTMENT AGREEMENT WITHIN THE PAST
19 TWENTY-FOUR (24) HOURS.

20 (Signature of Drawer)

21 YOU CANNOT BE PROSECUTED IN CRIMINAL COURT FOR A CHECK
22 WRITTEN UNDER THIS AGREEMENT, BUT ALL LEGALLY AVAILABLE CIVIL MEANS
23 TO ENFORCE THE DEBT MAY BE PURSUED AGAINST YOU.

24 STATE LAW PROHIBITS A DEFERRED PRESENTMENT PROVIDER (THIS
25 BUSINESS) FROM ALLOWING YOU TO "ROLL OVER" YOUR DEFERRED
26 PRESENTMENT TRANSACTION. THIS MEANS THAT YOU CANNOT BE ASKED OR
27 REQUIRED TO PAY AN ADDITIONAL FEE IN ORDER TO FURTHER DELAY THE
28 DEPOSIT OR PRESENTMENT OF YOUR CHECK FOR PAYMENT. IF YOU INFORM THE
29 PROVIDER IN PERSON THAT YOU CANNOT COVER THE CHECK OR PAY IN FULL
30 THE AMOUNT OWING AT THE END OF THE TERM OF THIS AGREEMENT, YOU WILL
31 RECEIVE A GRACE PERIOD EXTENDING THE TERM OF THE AGREEMENT FOR AN
32 ADDITIONAL SIXTY (60) DAYS AFTER THE ORIGINAL TERMINATION DATE,
33 WITHOUT ANY ADDITIONAL CHARGE. THE DEFERRED PRESENTMENT PROVIDER
34 SHALL REQUIRE THAT YOU, AS A CONDITION OF OBTAINING THE GRACE PERIOD,

1 COMPLETE CONSUMER CREDIT COUNSELING PROVIDED BY AN AGENCY
2 INCLUDED ON THE LIST THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER.
3 YOU MAY ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN
4 APPROVED BY THAT AGENCY. IF YOU DO NOT COMPLY WITH AND ADHERE TO A
5 REPAYMENT PLAN APPROVED BY THAT AGENCY, WE MAY DEPOSIT OR PRESENT
6 YOUR CHECK FOR PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL
7 MEANS TO ENFORCE THE DEBT AT THE END OF THE SIXTY (60) DAY GRACE
8 PERIOD.

9 (21) The deferred presentment provider may not deposit or present the drawer's check if
10 the drawer informs the provider in person that the drawer cannot redeem or pay in full in cash the
11 amount due and owing the deferred presentment provider. No additional fees or penalties may be
12 imposed on the drawer by virtue of any misrepresentation made by the drawer as to the
13 sufficiency of funds in the drawer's account. Additional fees may not be added to the amounts
14 due and owing to the deferred presentment provider.

15 (22) If, by the end of the deferment period, the drawer informs the deferred presentment
16 provider in person that the drawer cannot redeem or pay in full in cash the amount due and owing
17 the deferred presentment provider, the deferred presentment provider shall provide a grace period
18 extending the term of the agreement for an additional sixty (60) days after the original
19 termination date, without any additional charge.

20 (i) The provider shall require that as a condition of providing a grace period, that the
21 drawer make an appointment with a consumer credit counseling agency within seven (7) days
22 after the end of the deferment period and complete the counseling by the end of the grace period.
23 The drawer may agree to, comply with, and adhere to a repayment plan approved by the
24 counseling agency. If the drawer agrees to comply with and adhere to a repayment plan approved
25 by the counseling agency, the provider must also comply with and adhere to that repayment plan.
26 The deferred presentment provider may not deposit or present the drawer's check for payment
27 before the end of the sixty (60) day grace period unless the drawer fails to comply with such
28 conditions or the drawer fails to notify the provider of such compliance. Before each deferred
29 presentment transaction, the provider may verbally advise the drawer of the availability of the
30 grace period consistent with the written notice in subdivision (20), and may not discourage the
31 drawer from using the grace period.

32 (ii) At the commencement of the grace period, the deferred presentment provider shall
33 provide the drawer:

34 (A) Verbal notice of the availability of the grace period consistent with the written notice

1 in subdivision (20).

2 (B) A list of approved consumer credit counseling agencies prepared by the department.
3 The department list shall include nonprofit consumer credit counseling agencies affiliated with
4 the National Foundation for Credit Counseling which provide credit counseling services to state
5 residents in person, by telephone, or through the Internet. The department list must include phone
6 numbers for the agencies, the counties served by the agencies, and indicate the agencies that
7 provide telephone counseling and those that provide Internet counseling. The department shall
8 update the list at least once each year.

9 (C) The following notice in at least fourteen (14) point type in substantially the following
10 form:

11 AS A CONDITION OF OBTAINING A GRACE PERIOD EXTENDING THE TERM
12 OF YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN ADDITIONAL SIXTY
13 (60) DAYS, UNTIL [DATE], WITHOUT ANY ADDITIONAL FEES, YOU MUST
14 COMPLETE CONSUMER CREDIT COUNSELING PROVIDED BY AN AGENCY
15 INCLUDED ON THE LIST THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER.
16 YOU MAY ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN
17 APPROVED BY THE AGENCY. THE COUNSELING MAY BE IN PERSON, BY
18 TELEPHONE, OR THROUGH THE INTERNET. YOU MUST NOTIFY US WITHIN SEVEN
19 (7) DAYS, BY [DATE], THAT YOU HAVE MADE AN APPOINTMENT WITH A
20 CONSUMER CREDIT COUNSELING AGENCY. YOU MUST ALSO NOTIFY US WITHIN
21 SIXTY (60) DAYS, BY [DATE], THAT YOU HAVE COMPLETED THE CONSUMER
22 CREDIT COUNSELING. WE MAY VERIFY THIS INFORMATION WITH THE AGENCY.
23 IF YOU FAIL TO PROVIDE THE SEVEN (7) DAY OR SIXTY (60) DAY NOTICE, OR IF
24 YOU HAVE NOT MADE THE APPOINTMENT OR COMPLETED THE COUNSELING
25 WITHIN THE TIME REQUIRED, WE MAY DEPOSIT OR PRESENT YOUR CHECK FOR
26 PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE
27 THE DEBT.

28 (iii) If a drawer completes an approved payment plan, the deferred presentment provider
29 shall pay one-half (1/2) of the drawer's fee for the deferred presentment agreement to the
30 consumer credit counseling agency.

31 (23) The department shall implement a common database with real-time access through
32 an Internet connection for deferred presentment providers, as provided in this chapter. The
33 database must be accessible to the department and the deferred presentment providers in order to
34 verify whether any deferred presentment transactions are outstanding for a particular person.

1 Deferred presentment providers shall submit such data before entering into each deferred
2 presentment transaction in such format as required by rule, including the drawer's name, social
3 security number or employment authorization alien number, address, driver's license number,
4 amount of the transaction, date of transaction, the date that the transaction is closed, and such
5 additional information as is required by rule. The department may promulgate regulations to
6 impose a reasonable fee per transaction for data that must be submitted by a deferred presentment
7 provider. A deferred presentment provider may rely on the information contained in the database
8 as accurate and is not subject to any administrative penalty or civil liability due to relying on
9 inaccurate information contained in the database. A deferred presentment provider must notify
10 the department, in a manner as prescribed by rule, within fifteen (15) business days after ceasing
11 operations or no longer holding a license under this chapter. Such notification must include a
12 reconciliation of all open transactions. If the provider fails to provide notice, the department shall
13 take action to administratively release all open and pending transactions in the database after the
14 office becomes aware of the closure. This section does not affect the rights of the provider to
15 enforce the contractual provisions of the deferred presentment agreements through any civil
16 action allowed by law. The department may adopt regulations to administer this subsection and to
17 ensure that the database is used by deferred presentment providers in accordance with this
18 chapter.

19 (24) A deferred presentment provider may not accept more than one check or
20 authorization to initiate more than one automated clearinghouse transaction to collect on a
21 deferred presentment transaction for a single deferred presentment transaction.

22 **19-14.11-6. Database for deferred presentment providers - Not a public record. --**
23 Information that identifies a drawer or a deferred presentment provider contained in the database
24 authorized under this chapter is confidential and not a public record. A deferred presentment
25 provider may access information that it has entered into the database and may obtain an eligibility
26 determination for a particular drawer based on information in the database.

27 **19-14.11-7. Deposit and redemption. --** (a) The deferred presentment provider or its
28 affiliate may not present the drawer's check before the end of the deferment period, as reflected
29 in the deferred presentment transaction agreement.

30 (b) Before a deferred presentment provider presents the drawer's check, the check must
31 be endorsed with the name under which the deferred presentment provider is doing business.

32 (c) Notwithstanding subsection (a), in lieu of presentment, a deferred presentment
33 provider may allow the check to be redeemed at any time upon payment of the face amount of the
34 drawer's check. However, payment may not be made in the form of a personal check. Upon

1 redemption, the deferred presentment provider shall return the drawer's check and provide a
2 signed, dated receipt showing that the drawer's check has been redeemed.

3 (d) A drawer may not be required to redeem his or her check before the agreed-upon date;
4 however, the drawer may choose to redeem the check before the agreed-upon presentment date.

5 **19-14.11-8. Worthless checks. --** (a) If a check is returned to a deferred presentment
6 provider from a payor financial institution due to lack of funds, a closed account, or a stop-
7 payment order, the deferred presentment provider may seek collection in the normal course of
8 business. Except as otherwise provided in this chapter, an individual who issues a personal check
9 to a deferred presentment provider under a deferred presentment agreement is not subject to
10 criminal penalty.

11 (b) If a check is returned to a deferred presentment provider from a payor financial
12 institution due to insufficient funds, a closed account, or a stop-payment order, the deferred
13 presentment provider may pursue all legally available civil remedies to collect the check,
14 including, but not limited to, the imposition of all charges imposed on the deferred presentment
15 provider by the financial institution. In its collection practices, a deferred presentment provider
16 must comply with the prohibitions against harassment or abuse, false or misleading
17 representations, and unfair practices that are contained in the Fair Debt Collections Practices Act,
18 15 U.S.C. ss. 1692d, 1692e, and 1692f as may be amended from time to time.

19 (c) A deferred presentment provider may not assess the cost of collection, other than
20 charges for insufficient funds as allowed by law, without a judgment from a court of competent
21 jurisdiction.

22 **19-14.11-9. Rules and regulations. --** The director or the director's designee is
23 authorized, directed and empowered to promulgate rules and regulations, in addition to any other
24 rule making powers conferred on the director under this title, as may be required to implement the
25 provisions of this law, however, such rules and regulations must provide that licensees maintain:

26 (1) Continuously, for each licensed premises, liquid assets of at least ten thousand dollars
27 (\$10,000);

28 (2) Insurance issued by an insurance company or indemnity company, authorized to do
29 business under the laws of this state, which shall insure the applicant against loss by theft,
30 burglary, robbery or forgery in principal sum, as determined by the director or the director's
31 designee, which shall in no event be less than ten thousand dollars (\$10,000) nor more than one
32 hundred thousand dollars (\$100,000). The required amounts shall bear a relationship to the liquid
33 assets on hand at the licensed location; and

34 (3) An adequate written policy and affirmative program to insure compliance with state

1 [and federal money laundering statutes.](#)

2 **19-14.11-10. Penalties for unlicensed activity - Internet providers.** -- [Any person and](#)
3 [the several members, officers, directors, agents and employees of any person who are involved in](#)
4 [the operation of any unlicensed deferred presentment transaction services businesses, including,](#)
5 [but not limited to businesses conducting unlicensed deferred presentment transaction services](#)
6 [through the Internet shall have violated this chapter and be subject to any and all criminal and](#)
7 [administrative penalties levied by this title.](#)

8 **19-14.4-11. Severability.** -- [If any provision of this chapter or the application of this](#)
9 [chapter to any person or circumstances is held invalid or unconstitutional, the invalidity or](#)
10 [unconstitutionality shall not affect the other provisions or applications of this chapter that can be](#)
11 [given effect without the invalid or unconstitutional provisions or application, and to this end the](#)
12 [provisions of this chapter are declared to be severable.](#)

13 **19-14.4-12. Transition for Check Cashing Licensees.** -- [Persons with a license to cash](#)
14 [checks that was issued on or before July 1, 2012 pursuant to chapter 19-14.4 shall, without the](#)
15 [requirement for an initial application, receive a license under this chapter to provide deferred](#)
16 [presentment transaction services as long as such person has a bond on file with the department in](#)
17 [compliance with section 19-14-6 as of July 1, 2012. The department shall issue such new licenses](#)
18 [as required herein by August 15, 2012. On July 1, 2012 and thereafter, all such persons affected](#)
19 [herein shall be subject to all the requirements for a deferred presentment license under this](#)
20 [chapter, including, but not limited to, all applicable fees, bonds and renewal applications.](#)

21 SECTION 5. 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 - DEFERRED PRESENTMENT
TRANSACTIONS

1 This act would provide for separate licensing requirements for check cashers and pay day
2 lenders. This act would also create the pay day lending law in order to subject pay day lenders to
3 various consumer protecting provisions.

4 This act would take effect upon passage.

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