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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

A N A C T

RELATING TO FINANCIAL INSTITUTIONS -- LICENSED ACTIVITIES

Introduced By: Senator William A. Walaska

Date Introduced: April 04, 2013

Referred To: Senate Commerce

It is enacted by the General Assembly as follows:

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

3 **19-14-1. Definitions. --** 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 of this
5 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 by an employee, agent, or representative of the

4 lender within this state;

5 (C) The loan closes within this state;

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 any person 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;

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
24 and/or equity interest of a 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~~ whose primary business is the cashing of checks,

drafts or money orders for a fee. A check casher license is not required when a person or entity cashes checks, drafts or money orders for free, or when a person or entity cashes checks, drafts or money orders as an incident to the conduct of another lawful business (e.g. a store) and not more than fifty cents (\$.50) is charged. No check casher may apply any funds or currency for a check cashing transaction to any payment instrument such as a debit card or check to card where fees are not fully disclosed and transparent.

(16) "Deferred deposit transaction" means any transaction such as those commonly known as "pay-day loans," "pay-day advances," or "deferred presentment loans" in which a cash advance is made to a customer in exchange for the customer's personal check or in exchange for the customer's authorization to debit the customer's deposit account and where the parties agree 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) "Nonprofit organization" means a corporation qualifying as a 26 U.S.C. section 501(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;

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

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

(23) "Loan solicitation" shall mean an effectuation, procurement, delivery and offer, and advertisement of a loan. Loan solicitation also includes providing or accepting loan applications and assisting persons in completing loan applications and/or advising, conferring, or informing

1 anyone regarding the benefits, terms and/or conditions of a loan product or service. Loan
2 solicitation does not include loan processing or loan underwriting as defined in this section. Loan
3 solicitation does not include telemarketing which is defined for purposes of this section to mean
4 contacting a person by telephone with the intention of collecting such person's name, address and
5 telephone number for the sole purpose of allowing a mortgage loan originator to fulfill a loan
6 inquiry;

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

14 (i) Providing loan closing services;

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

16 (iii) Rendering of appraisal services.

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

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

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

34 (28) "Bona-fide employee" shall mean an employee of a licensee who works under the

oversight and supervision of the licensee;

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

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

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

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

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

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

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

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

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

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

3 SECTION 2. 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 -- LICENSED ACTIVITIES

- 1 This act would redefine a check casher as a person or entity whose primary business is
2 the cashing of checks, drafts or money orders for a fee and would exempt persons or entities
3 cashing checks, drafts or money orders for a fee or as an incident to the conduct of another lawful
4 business and not more than fifty cent (\$0.50) is charged from the requirement of a check casher
5 license.
- 6 This act would take effect upon passage.

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