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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO FINANCIAL INSTITUTIONS - REGULATORY OVERSIGHT

Introduced By: Representatives McKiernan, Carnevale, O'Brien, and Ruggiero

Date Introduced: March 03, 2016

Referred To: House Corporations

(Business Regulation)

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, 14.10, and 14.11 of
5 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 including stored value. For the purposes of
8 check cashing, travelers checks or foreign denomination instruments shall not be considered
9 checks. "Check 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
12 not 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 and shall include the exchange, sale or transaction of virtual
17 currency;

18 (4) (i) "Lender" means any person who makes or funds a loan within this state with the
19 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) Any transaction, such as those commonly known as "payday loans", "payday
34 advances", or "deferred-presentment loans", in which a cash advance is made to a customer in

1 exchange for the customer's personal check, or in exchange for the customer's authorization to
2 debit the customer's deposit account, and where the parties agree either, that the check will not be
3 cashed or deposited, or that customer's deposit account will not be debited, until a designated
4 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
7 sells a loan within this state for others in the primary market, or offers to do so. A loan broker
8 shall also mean any person who is the nominal mortgagee or creditor in a table-funding
9 transaction. A 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
12 representative 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 who or that, for compensation, engages, in

1 whole or in part, in the business of cashing checks;

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

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

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

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

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

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

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

26 (23) "Loan solicitation" shall mean an effectuation, procurement, delivery and offer, and
27 advertisement of a loan. Loan solicitation also includes providing or accepting loan applications
28 and assisting persons in completing loan applications and/or advising, conferring, or informing
29 anyone regarding the benefits, terms and/or conditions of a loan product or service. Loan
30 solicitation does not include loan processing or loan underwriting as defined in this section. Loan
31 solicitation does not include telemarketing that is defined, for purposes of this section, to mean
32 contacting a person by telephone with the intention of collecting such person's name, address, and
33 telephone number for the sole purpose of allowing a mortgage loan originator to fulfill a loan
34 inquiry;

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

8 (i) Providing loan closing services;

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

10 (iii) Rendering of appraisal services.

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

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

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

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

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

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

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

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

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

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

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

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

25 (34) "Loan-closing services" means providing title services, including title searches, title
26 examinations, abstract preparation, insurability determinations, and the issuance of title
27 commitments and title insurance policies, conducting loan closings, and preparation of loan-
28 closing documents when performed by, or under the supervision of, a licensed attorney, licensed
29 title agency, or licensed title insurance company;

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

1 or a reverse mortgage, servicing includes making payment to the borrower;

2 (36) "Third-party loan servicer" means a person or entity who or that, directly or
3 indirectly, engages in the business of servicing a loan secured by residential real estate located in
4 Rhode Island, for a personal, family, or household purpose, owed or due, or asserted to be owed
5 or due, another, or a person or entity that owns the servicing rights to a loan secured by residential
6 real estate located in Rhode Island whether or not that owner services the loan themselves or
7 contracts with another person or entity for the servicing; and

8 (37) "Writing" means hard-copy writing or electronic writing that meets the
9 requirements of § 42-127.1-1 et seq.

10 SECTION 2. Sections 27-14.5-1, 27-14.5-3 and 27-14.5-6 of the General Laws in
11 Chapter 27-14.5 entitled "Voluntary Restructuring of Solvent Insurers" are hereby amended to
12 read as follows:

13 **27-14.5-1. Definitions.** -- As used in this chapter:

14 (1) "Applicant" means a commercial run-off insurer applying under § 27-14.5-4.

15 (2) "Assessment deficit" means the amount that the assessment for the previous year
16 under § 27-14.5-5 is less than, and "assessment surplus" is the amount that the assessment for the
17 previous year exceeds:

18 (i) The run-off insurer's proportionate share of regulatory expenditure for the previous
19 year, if the run-off insurer was domiciled in Rhode Island on March 15 of the previous year; or

20 (ii) The redomestication expenditure for the previous year attributable to the run-off
21 insurer, if the run-off insurer was not domiciled in Rhode Island on March 15 of the previous
22 year.

23 (3) "Assumption policyholder" means a policyholder whose policy is reinsured under an
24 assumption reinsurance agreement between the applicant and a reinsurer.

25 (4) "Assumption reinsurance agreement" has the meaning given in § 27-53.1-3(b),
26 subject to the following:

27 (i) The agreement may be conditioned upon the court's entry of an implementation order.

28 (ii) If any policy subject to the agreement is protected through a guarantee association,
29 then the assuming insurer must have been and be licensed, and must have been and be a member
30 of the guarantee association, in all states known to the applicant in which either: (A) any property
31 covered under the policy has a permanent situs; or (B) the policyholder resided while the policy
32 was in force.

33 (5) "Class of creditors" means:

34 (i) All voting policyholders, including those without known claims;

- 1 (ii) Voting creditors, other than policyholders; or
- 2 (iii) Any separate class of creditors as the court may in its discretion determine should
- 3 approve the commutation plan.
- 4 (6) "Commercial run-off insurer" means:
- 5 (i) A run-off insurer domiciled in Rhode Island whose business, excluding all business
- 6 subject to an assumption reinsurance agreement, includes only the reinsuring of any line(s) of
- 7 business other than life and/or the insuring of any line(s) of business other than life, workers'
- 8 compensation, and personal lines insurance; or
- 9 (ii) A Rhode Island domestic insurance company meeting the requirements of subsection
- 10 (i) hereof ~~and formed or re-activated for the sole purpose of entering into a voluntary~~
- 11 ~~restructuring under this chapter~~ and whose liabilities consist of commercial liabilities transferred
- 12 to said company with the approval of the commissioners and pursuant to the regulations issued by
- 13 the department under this chapter. The amount of the commercial liabilities transferred must be
- 14 less than or equal to the amount of assets transferred to the newly formed or re-activated
- 15 company.
- 16 (7) "Commissioner" means the director of the department.
- 17 (8) "Commutation plan" means a plan for extinguishing the outstanding liabilities of a
- 18 commercial run-off insurer.
- 19 (9) "Creditor" means:
- 20 (i) Any person that has a claim against the applicant; or
- 21 (ii) A policyholder other than an assumption policyholder.
- 22 (10) "Department" means the department of business regulation.
- 23 (11) "Guarantee association" means a guarantee association or foreign guarantee
- 24 association, as those terms are defined in § 27-14.3-3(10), that is potentially obligated with
- 25 respect to the applicant's policies.
- 26 (12) "Implementation order" means an order under § 27-14.5-4(c).
- 27 (13) "Insurer" has the meaning given in § 27-14.3-3(12).
- 28 (14) "Person" means an individual, corporation, partnership, association, joint stock
- 29 company, trust, unincorporated organization, or any similar entity or any combination of the
- 30 foregoing acting in concert.
- 31 (15) "Personal lines insurance" means insurance issued for personal, family, or
- 32 household purposes.
- 33 (16) "Policy" means a contract of insurance or a contract of reinsurance.
- 34 (17) "Policyholder" means an insured or a reinsured of the insurer.

1 (18) "Proportionate share" means, for a particular run-off insurer as of December 31 of
2 the previous year, the ratio of:

3 (i) The gross assets of that run-off insurer; to

4 (ii) The gross assets of all run-off insurers, other than those that were not domiciled in
5 Rhode Island on March 15 of that calendar year.

6 (19) "Redomestication expenditure" means, for any calendar year:

7 (i) The amount that the department's expenditures attributable to the regulation of run-off
8 insurers increases as a result of any run-off insurer redomiciling to Rhode Island on or after
9 March 15 of that year; less

10 (ii) Filing fees, examination costs, and any other fees in relation to insurance regulation
11 in this state paid to this state by run-off insurers that redomiciled to Rhode Island on or after
12 March 15 of that year, but excluding any premium taxes.

13 (20) "Regulatory expenditure" means, for any calendar year:

14 (i) The amount of the department's expenditures attributable to the regulation of run-off
15 insurers domiciled in Rhode Island on March 15 of that year; less

16 (ii) Filing fees, examination costs, and any other fees in relation to insurance regulation
17 in this state paid to this state by run-off insurers domiciled in Rhode Island on March 15 of that
18 year, but excluding any premium taxes.

19 (21) "Run-off insurer" means an insurer that:

20 (i) Is domiciled in Rhode Island;

21 (ii) Has liabilities under policies for property and casualty lines of business;

22 (iii) Has ceased underwriting new business; and

23 (iv) Is only renewing ongoing business to the extent required by law or by contract.

24 **27-14.5-3. Notice.** -- (a) Wherever in this chapter notice is required, the applicant shall,
25 within ten (10) days of the event triggering the requirement, cause transmittal of the notice:

26 (1) ~~By first class mail and facsimile to~~ [To](#) the insurance regulator in each jurisdiction in
27 which the applicant is doing business;

28 (2) ~~By first class mail to~~ [To](#) the national conference of insurance guaranty funds and all
29 guaranty associations for the states in which the applicant is doing business;

30 (3) ~~Pursuant~~ [To all reinsures of the applicant pursuant](#) to the notice provisions of
31 reinsurance agreements or, where an agreement has no provision for notice, ~~by first class mail in~~
32 [a manner reasonably designed to provide actual notice](#) to all reinsures of the applicant;

33 (4) ~~By first class mail to~~ [To](#) all insurance agents or insurance producers of the applicant;

34 (5) ~~By first class mail to~~ [To](#) all persons known or reasonably expected to have claims

1 against the applicant including all policyholders, at their last known address as indicated by the
2 records of the applicant;

3 (6) ~~By first class mail to~~ To federal, state, and local government agencies and
4 instrumentalities as their interests may arise; and

5 (7) By publication in a newspaper of general circulation in the state in which the
6 applicant has its principal place of business and in any other locations that the court overseeing
7 the proceeding deems appropriate.

8 (b) Notice under this section shall be given in a manner designed to provide actual notice
9 to the intended recipient. Depending upon the circumstances that notice may take the form of first
10 class mail, facsimile and/or electronic notice.

11 ~~(b)~~(c) If notice is given in accordance with this section, any orders under this chapter
12 shall be conclusive with respect to all claimants and policyholders, whether or not they received
13 notice.

14 ~~(c)~~(d) Where this chapter requires that the applicant provide notice but the commissioner
15 has been named receiver of the applicant, the commissioner shall provide the required notice.

16 **27-14.5-6. Rules and regulations.** -- The commissioner shall promulgate rules and
17 regulations that may be necessary to effectuate the purposes of this chapter including, but not
18 limited to, procedures for transferring commercial liabilities and standards for commutation
19 plans. no later than January 1, 2003. The department shall not accept applications under § 27-
20 14.5-4 until the time that these regulations have been promulgated.

21 SECTION 3. 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 - REGULATORY OVERSIGHT

1 This act would provide that electronic money transfers include transactions of virtual
2 currency and would amend the provisions on notices in connection with the voluntary
3 restructuring of solvent insurers to eliminate the requirement of first class mail.

4 This act would take effect upon passage.

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