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RELATING TO FINANCIAL INSTITUTIONS - SMALL LOAN LENDERS

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LC00981
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Presented by
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2011 --

LC00981

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO FINANCIAL INSTITUTIONS - SMALL LOAN LENDERS

Introduced By:

Date Introduced:

Referred To:

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;

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

7 ~~(17)~~(16) "Insurance premium finance agreement" means an agreement by which an
8 insured, or prospective insured, promises to pay to an insurance premium finance company the
9 amount advanced or to be advanced, under the agreement to an insurer or to an insurance
10 producer, in payment of a premium or premiums on an insurance contract or contracts, together
11 with interest and a service charge, as authorized and limited by this title;

12 ~~(18)~~(17) "Insurance premium finance company" means a person engaged in the business
13 of making insurance premium finance agreements or acquiring insurance premium finance
14 agreements from other insurance premium finance companies;

15 ~~(19)~~(18) "Simple interest" means interest computed on the principal balance outstanding
16 immediately prior to a payment for the actual number of days between payments made on a loan
17 over the life of a loan;

18 ~~(20)~~(19) "Nonprofit organization" means a corporation qualifying as a 26 U.S.C. section
19 501(c)(3) nonprofit organization, in the operation of which no member, director, officer, partner,
20 employee, agent, or other affiliated person profits financially other than receiving reasonable
21 salaries if applicable;

22 ~~(21)~~(20) "Mortgage loan originator" has the same meaning set forth in subdivision 19-
23 14.10-3(6);

24 ~~(22)~~(21) "Mortgage loan" means a loan secured in whole or in part by real property
25 located in this state;

26 ~~(23)~~(22) "Loan solicitation" shall mean an effectuation, procurement, delivery and offer,
27 and advertisement of a loan. Loan solicitation also includes providing or accepting loan
28 applications and assisting persons in completing loan applications and/or advising, conferring, or
29 informing anyone regarding the benefits, terms and/or conditions of a loan product or service.
30 Loan solicitation does not include loan processing or loan underwriting as defined in this section.
31 Loan solicitation does not include telemarketing which is defined for purposes of this section to
32 mean contacting a person by telephone with the intention of collecting such person's name,
33 address and telephone number for the sole purpose of allowing a mortgage loan originator to
34 fulfill a loan inquiry;

1 ~~(24)~~(23) "Processes" shall mean, with respect to a loan, any of a series of acts or
2 functions including the preparation of a loan application and supporting documents performed by
3 a person which 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 a
7 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)~~(24) "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 recommendation
16 regarding loan approval;

17 ~~(26)~~(25) "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)~~(26) "Natural person employee" shall mean any natural person performing services
21 as a bona-fide employee for a person licensed under the provisions of Rhode Island general laws
22 section 19-14-1, et. seq., in return for a salary, wage, or other consideration, where such salary,
23 wage, or consideration is reported by the licensee on a federal form W-2 payroll record. The term
24 does not include any natural person or business entity performing services for a person licensed
25 under the provisions of Rhode Island general laws in return for a salary, wage, or other
26 consideration, where such salary, wage, or consideration is reported by the licensee on a federal
27 form 1099;

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

30 ~~(29)~~(28) "Oversight and supervision of the licensee" shall mean that the licensee
31 provides training to the employee, sets the employee's hours of work, and provides the employee
32 with the equipment and physical premises required to perform the employee's duties;

33 ~~(30)~~(29) "Operating subsidiary" shall mean a majority-owned subsidiary of a financial
34 institution or banking institution that engages only in activities permitted by the parent financial

1 institution or banking institution;

2 ~~(31)~~(30) "Provisional employee" means a natural person who, pursuant to a written
3 agreement between the natural person and a wholly owned subsidiary of a financial holding
4 company, as defined in The Bank Holding Company Act of 1956, as amended, a bank holding
5 company, savings bank holding company, or thrift holding company, is an exclusive agent for the
6 subsidiary with respect to mortgage loan originations, and the subsidiary: (a) holds a valid loan
7 broker's license and (b) enters into a written agreement with the director or the director's designee
8 to include:

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

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

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

18 ~~(32)~~(31) "Multi-state licensing system" means a system involving one or more states, the
19 District of Columbia, or the Commonwealth of Puerto Rico established to facilitate the sharing of
20 regulatory information and the licensing, application, reporting and payment processes, by
21 electronic or other means, for mortgage lenders and loan brokers, and other licensees required to
22 be licensed under this chapter.

23 ~~(33)~~(32) "Negative equity" means the difference between the value of an asset and the
24 outstanding portion of the loan taken out to pay for the asset, when the latter exceeds the former
25 amount.

26 ~~(34)~~(33) "Loan closing services" means providing title services, including title searches,
27 title examinations, abstract preparation, insurability determinations, and the issuance of title
28 commitments and title insurance policies, conducting loan closings, and preparation of loan
29 closing documents when performed by or under the supervision of a licensed attorney, licensed
30 title agency, or licensed title insurance company.

31 SECTION 2. Section 19-14.1-10 of the General Laws in Chapter 19-14.1 entitled
32 "Lenders and Loan Brokers" is hereby amended to read as follows:

33 **19-14.1-10. Special exemptions.** -- (a) The licensing provisions of chapter 14 of this title
34 shall not apply to:

1 (1) Nonprofit charitable, educational, or religious corporations or associations;

2 (2) Any person who makes less than six (6) loans in this state in any consecutive twelve
3 (12) month period; there is no similar exemption from licensing for loan brokers for brokering
4 loans or acting as a loan broker;

5 (3) Any person acting as an agent for a licensee for the purpose of conducting closings at
6 a location other than that stipulated in the license;

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

18 (5) Any natural person employee who is employed by a licensee when acting on the
19 licensee's behalf; provided that this exemption shall not apply to a mortgage loan originator
20 required to be licensed under section 19-14-2 or section 19-14.10-4.

21 (6) A licensed attorney when performing loan closing services for a licensee or for an
22 entity identified in subdivision (4) above.

23 (b) The provisions of this chapter and chapter 14 of this title shall not apply to:

24 (1) Loans to corporations, joint ventures, partnerships, limited liability companies or
25 other business entities;

26 (2) Loans over twenty-five thousand dollars (\$25,000) in amount to individuals for
27 business or commercial, as opposed to personal, family or household purposes;

28 (3) Loans principally secured by accounts receivable and/or business inventory;

29 (4) Loans made by a life insurance company wholly secured by the cash surrender value
30 of a life insurance policy;

31 (5) Education-purpose loans made by the Rhode Island health and educational building
32 corporation as vested in chapter 38.1 of title 45 of the Rhode Island student loan authority as
33 vested in chapter 62 of title 16;

34 (6) The acquisition of retail or loan installment contracts by an entity whose sole

1 business in this state is acquiring them from federal banks receivers or liquidators;

2 (7) Notes evidencing the indebtedness of a retail buyer to a retail seller of goods,
3 services or insurance for a part or all of the purchase price; or

4 (8) Any state or federal agency which makes, brokers, or funds loans or acts as a lender
5 or a loan broker. This exemption includes exclusive agents or exclusive contractors of the agency
6 specifically designated by the agency to perform those functions on behalf of the agency and
7 which has notified the director, in writing, of the exclusive agency or contract.

8 (9) Notes evidencing the indebtedness of a retail buyer to a retail motor vehicle dealer
9 that include as part of the amount financed, disclosed in accordance with 12 C.F.R. 226.18 as
10 amended, an amount representing negative equity related to the motor vehicle being traded in as
11 part of the purchase price of the motor vehicle being purchased.

12 ~~(e) No license to make or fund loans, or to act as a lender or small loan lender shall be~~
13 ~~required of any person who engages in deferred deposit transactions (commonly known as "pay-~~
14 ~~day advance") while holding a valid license to cash checks pursuant to chapter 14 of this title.~~

15 SECTION 3. Section 19-14.2-1 of the General Laws in Chapter 19-14.2 entitled "Small
16 Loan Lenders" is hereby amended to read as follows:

17 **19-14.2-1. Maximum rate on small loans not authorized by chapter.** -- (a) No person,
18 except as authorized by this chapter, shall directly or indirectly charge, contract for, or receive
19 any interest, discount, or consideration greater than provided by this chapter upon the loan, use,
20 or sale of credit of the amount or value of five thousand dollars (\$5,000) or less.

21 (b) The prohibition in subsection (a) shall apply to any person who, by any device,
22 subterfuge, or pretense shall charge, contract for, or receive greater interest, consideration, or
23 charges than is authorized by this chapter for the loan, use, or forbearance of money, goods, or
24 things in action, or for the loan, use, or sale of credit.

25 (c) No person may engage in any device, subterfuge, or pretense to evade the
26 requirements of this chapter, including making loans disguised as personal property sales and
27 leaseback transactions, or disguising loan proceeds as cash rebates for the pretextual installment
28 sale of goods or services, or assisting a debtor to obtain a loan with a greater rate of interest,
29 consideration, or charges than is permitted by this chapter through any method including mail,
30 telephone, internet or any electronic means regardless of whether the person has a physical
31 location in the state.

32 ~~(e)~~ (d) No loan of the amount or value of five thousand dollars (\$5,000) or less for which
33 a greater rate of interest, consideration, or charges than is permitted by this chapter has been
34 charged, contracted for, or received, wherever made, shall be enforced in this state, and every

1 person in any way participating therein in this state shall be subject to the provisions of this
2 chapter, provided that this section shall not apply to loans legally made in any other state,
3 commonwealth, or district which then has in effect a regulatory small loan law similar in
4 principal to this chapter.

5 SECTION 4. Section 19-14.4-4 and 19-14.4-5 of the General Laws in Chapter 19-14.4
6 entitled "Check Cashing" are hereby amended to read as follows:

7 **19-14.4-4. Fees for services.** -- No licensee shall:

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

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

13 (3) Charge check-cashing fees in excess of five percent (5%) of the face amount of the
14 check or five dollars (\$5.00), whichever is greater, for all other checks.

15 ~~(4) Charge deferred deposit transaction fees in excess of ten percent (10%) of the amount~~
16 ~~of funds advanced.~~

17 **19-14.4-5. Posting of charges -- Endorsement -- Receipt.** -- (a) In every location
18 licensed pursuant to this chapter, there shall be at all times posted in a conspicuous place within
19 the licensed premises a complete and unambiguous schedule of all fees for cashing checks,
20 ~~deferred deposit transactions expressed as both a dollar amount and an annual percentage rate,~~
21 and the initial issuance of any identification card.

22 (b) Before a licensee shall deposit, with any regulated institution or other insured-
23 deposit-taking institution organized under the laws of the United States, a check cashed by the
24 licensee, the check must be endorsed with the name under which the licensee is doing business
25 and must include the words "licensed check cashing services".

26 (c) The licensee shall provide a receipt for each transaction for the benefit of a customer.

27 (d) Each check casher shall also post a list of valid identification which is acceptable in
28 lieu of identification provided by the check casher. The information required by this section shall
29 be clear, legible, and in letters not less than one-half (1/2) inch in height. The information shall be
30 posted in a conspicuous location in the unobstructed view of the public within the check cashers'
31 premises. Failure to post information as required by this section, or the imposition of fees or
32 identification requirements contrary to the information posted, shall constitute a deceptive trade
33 practice under chapter 13.1 of title 6.

34 SECTION 5. Section 19-14.4-5.1 of the General Laws in Chapter 19-14.4 entitled

1 "Check Cashing" is hereby repealed.

2 ~~19-14.4 5.1. Customer checks — Deferred deposits.~~ (a) A check casher may defer the
3 deposit of a personal check written by a customer for a term of no less than thirteen (13) days,
4 pursuant to the provisions of this section. The face amount of the check shall not exceed five
5 hundred dollars (\$500).

6 ~~(b) Each deferred deposit shall be made pursuant to a written agreement that has been~~
7 ~~signed by the customer and by the check casher or an authorized representative of the check~~
8 ~~easher. The written agreement shall contain a statement of the total amount of any fees charged~~
9 ~~for the deferred deposit, expressed both in United States currency and as an annual percentage~~
10 ~~rate (APR), as required by federal regulations. The written agreement shall authorize the check~~
11 ~~easher to defer deposit of the personal check until a specific date no less than thirteen (13) days~~
12 ~~from the date the written agreement was signed and executed. The written agreement shall not~~
13 ~~permit the check casher to accept collateral.~~

14 ~~(c) A roll-over is an extension or deferral of the payment due date of a deferred deposit~~
15 ~~transaction for the payment of only an additional fee.~~

16 ~~(d) The maximum amount of a single customer's check is five hundred dollars (\$500).~~

17 ~~(e) The maximum aggregate amount of concurrently outstanding checks held by the~~
18 ~~licensee or its affiliate from the same customer is five hundred dollars (\$500).~~

19 ~~(f) The maximum number of concurrently outstanding checks held by the licensee or its~~
20 ~~affiliates from the same customer is three (3).~~

21 ~~(g) The maximum number of rollovers permitted is one.~~

22 ~~(h) The check casher shall give a duplicate original of the agreement to the customer at~~
23 ~~the time of the transaction.~~

24 SECTION 6. 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 - SMALL LOAN LENDERS

- 1 This act would repeal sections of the general laws allowing deferred deposit providers,
- 2 also known as "payday lenders."
- 3 This act would take effect upon passage.

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