

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO FINANCIAL INSTITUTIONS -- POWERS AND OPERATIONS

Introduced By: Senator Roger Picard

Date Introduced: March 22, 2023

Referred To: Senate Commerce

(Dept. of Business Regulations)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 19-3-3 of the General Laws in Chapter 19-3 entitled "Powers and
2 Operations" is hereby amended to read as follows:

3 **19-3-3. Maximum aggregate liability of one person or company.**

4 (a) No financial institution shall permit any person or entity to borrow or guaranty an
5 amount(s), directly or indirectly, in the aggregate, that exceeds fifteen percent (15%) of its
6 unimpaired capital. In calculating this limitation, a financial institution shall take into account the
7 credit exposure to any such person or entity arising from derivative transactions. The director shall
8 have the authority to establish the method for determining the credit exposure and the extent to
9 which the credit exposure shall be taken into account. As used in this subsection, "derivative
10 transaction" includes any transaction that is a contract, agreement, swap, warrant, note or option
11 that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the
12 occurrence of any event leading to, one or more commodities, securities, currencies, interest or
13 other rates, indices or other assets. The director may adopt regulations establishing the method for
14 determining credit exposure to derivative transaction and the extent to which the credit exposure
15 shall be taken into account. The director shall apply the limitation included herein to derivative
16 transaction entered into on or after January 1, 2013.

17 This limitation shall not include:

18 (1) Obligations issued by the United States;

19 (2) General obligations of the state of Rhode Island;

1 (3) Loans or any portion thereof that are insured or guaranteed by the United States or any
2 agency thereof;

3 (4) Inter-bank transactions involving the transfer of immediately available funds resulting
4 from credits to deposit balances at Federal Reserve banks or from credit to new or existing deposit
5 balances due from a correspondent depository institution (commonly known as the sale of federal
6 funds) with a maturity of one business day or less; or

7 (5) Loans secured by deposits within the financial institution where a perfected interest in
8 the deposits is on record.

9 (b) To the extent that a deposit-taking institution regulated by the Federal ~~Office of Thrift~~
10 ~~Supervision~~ Reserve Bank and insured by the Federal Deposit Insurance Corporation is expressly
11 permitted to make loans that would exceed the limitations set forth in this section, the lending
12 limitations of the ~~Office of Thrift Supervision~~ Reserve Bank shall apply. Nothing herein shall limit
13 the department of business regulation from taking any action it deems appropriate to maintain
14 appropriate safety and soundness standards relative to any loan or loans made by any financial
15 institutions.

16 SECTION 2. Sections 19-14-1 and 19-14-5 of the General Laws in Chapter 19-14 entitled
17 "Licensed Activities" are hereby amended to read as follows:

18 **19-14-1. Definitions.**

19 Unless otherwise specified, the following terms shall have the following meanings
20 throughout chapters 14, 14.1, 14.2, 14.3, 14.4, 14.6, 14.8, 14.10, and 14.11 of this title:

21 (1) "Bona fide employee" shall mean an employee of a licensee who works under the
22 oversight and supervision of the licensee.

23 (2) "Check" means any check, draft, money order, personal money order, or other
24 instrument for the transmission or payment of money. For the purposes of check cashing, travelers
25 checks or foreign denomination instruments shall not be considered checks. "Check cashing"
26 means providing currency for checks.

27 (3) "Check casher" means a person or entity who or that, for compensation, engages, in
28 whole or in part, in the business of cashing checks.

29 (4) "Currency transmission" means engaging in the business of any of the following:

30 (i) Sale or issuance of payment instruments or stored value primarily for personal, family,
31 or household purposes; or

32 (ii) Receiving money or monetary value for transmission or holding funds incidental to
33 transmission within the United States or to locations abroad by any and all means, including
34 payment instrument, stored value, wire, facsimile, or electronic transfer, primarily for personal,

1 family, or household purposes. This includes maintaining control of virtual currency or transactions
2 in virtual currency on behalf of others.

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

9 (6) [Deleted by P.L. 2019, ch. 226, § 1 and P.L. 2019, ch. 246, § 1.]

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

19 (9) “Insurance premium finance company” means a person or entity engaged in the
20 business of making insurance premium finance agreements or acquiring insurance premium finance
21 agreements from other insurance premium finance companies.

22 (10)(i) “Lender” means any person who makes or funds a loan within this state with the
23 person’s own funds, regardless of whether the person is the nominal mortgagee or creditor on the
24 instrument evidencing the loan;

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

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

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

29 (C) The loan closes within this state;

30 (D) A retail installment contract as defined herein is created;

31 (E) The loan solicitation is done by an individual with a physical presence in this state; or

32 (F) The lender maintains an office in this state;

33 (iii) The term “lender” shall also include any person engaged in a transaction whereby the
34 person makes or funds a loan within this state using the proceeds of an advance under a line of

1 credit over which proceeds the person has dominion and control and for the repayment of which
2 the person is unconditionally liable. This transaction is not a table-funding transaction. A person is
3 deemed to have dominion and control over the proceeds of an advance under a line of credit used
4 to fund a loan regardless of whether:

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

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

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

12 (D) Under the circumstances, as set forth in regulations adopted by the director, or the
13 director's designee, pursuant to this chapter.

14 (11) "Licensee" means any person licensed under this chapter.

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

16 (i) Loans secured by mortgages;

17 (ii) Insurance premium finance agreements;

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

20 (iv) Educational loans;

21 (v) Any other advance of money; or

22 (vi) Any transaction, such as those commonly known as "payday loans," "payday
23 advances," or "deferred-presentment loans," in which a cash advance is made to a customer in
24 exchange for the customer's personal check, or in exchange for the customer's authorization to
25 debit the customer's deposit account, and where the parties agree either, that the check will not be
26 cashed or deposited, or that customer's deposit account will not be debited, until a designated future
27 date.

28 (13) "Loan broker" means any person or entity who or that, for compensation or gain, or
29 in the expectation of compensation or gain, either directly or indirectly, solicits, processes,
30 negotiates, places, or sells a loan within this state for others in the primary market, or offers to do
31 so. A loan broker shall also mean any person who is the nominal mortgagee or creditor in a table-
32 funding transaction. A loan is brokered within this state if any of the following conditions exist:

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

34 (ii) An application for a loan is taken or received by an employee, agent, or representative

1 of the loan broker within this state;

2 (iii) The loan closes within this state;

3 (iv) The loan solicitation is done by an individual with a physical presence in this state; or

4 (v) The loan broker maintains an office in this state.

5 (14) "Loan-closing services" means providing title services, including title searches, title
6 examinations, abstract preparation, insurability determinations, and the issuance of title
7 commitments and title insurance policies, conducting loan closings, and preparation of loan-closing
8 documents when performed by, or under the supervision of, a licensed attorney, licensed title
9 agency, or licensed title insurance company.

10 (15) "Loan solicitation" shall mean an effectuation, procurement, delivery and offer, or
11 advertisement of a loan. Loan solicitation also includes providing or accepting loan applications
12 and assisting persons in completing loan applications and/or advising, conferring, or informing
13 anyone regarding the benefits, terms and/or conditions of a loan product or service. Loan
14 solicitation does not include loan processing or loan underwriting as defined in this section. Loan
15 solicitation does not include telemarketing that is defined, for purposes of this section, to mean
16 contacting a person by telephone with the intention of collecting such person's name, address, and
17 telephone number for the sole purpose of allowing a mortgage loan originator to fulfill a loan
18 inquiry.

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

25 (17) "Monetary value" means a medium of exchange, whether or not redeemable in fiat
26 currency.

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

29 (19) "Mortgage loan originator" has the same meaning set forth in § 19-14.10-3(6).

30 (20) "Nationwide Multistate Licensing System" means a system involving more than one
31 state, the District of Columbia, or the Commonwealth of Puerto Rico and that is established to
32 facilitate the sharing of regulatory information and the licensing, application, reporting, and
33 payment processes, by electronic or other means, for mortgage lenders and loan brokers and other
34 licensees required to be licensed under this chapter.

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

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

11 (23) "Negotiates" shall mean, with respect to a loan, to confer directly with, or offer advice
12 directly to, a loan applicant or prospective loan applicant for a loan product or service concerning
13 any of the substantive benefits, terms, or conditions of the loan product or service.

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

18 (25) "Operating subsidiary" shall mean a majority-owned subsidiary of a financial
19 institution or banking institution that engages only in activities permitted by the parent financial
20 institution or banking institution.

21 (26) "Oversight and supervision of the licensee" shall mean that the licensee provides
22 training to the employee, sets the employee's hours of work, provides the employee with the
23 equipment required to perform the employee's duties, and supervises the services provided by the
24 employee to the licensee.

25 (27) "Personal money order" means any instrument for the transmission or payment of
26 money in relation to which the purchaser or remitter appoints, or purports to appoint, the seller as
27 his or her agent for the receipt, transmission, or handling of money, whether the instrument is signed
28 by the seller, or by the purchaser, or remitter, or some other person.

29 (28) "Primary market" means the market in which loans are made to borrowers by lenders,
30 whether or not through a loan broker or other conduit.

31 (29) "Principal owner" means any person or entity who or that owns, controls, votes, or
32 has a beneficial interest in, directly or indirectly, ten percent (10%) or more of the outstanding
33 capital stock and/or equity interest of a licensee.

34 (30) "Processes" shall mean, with respect to a loan, any of a series of acts or functions,

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

- 7 (i) Providing loan closing services;
- 8 (ii) Rendering of credit reports by an authorized credit reporting agency; and
- 9 (iii) Rendering of appraisal services.

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

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

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

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

26 (32) "Remote location" means a location meeting the requirements of § 19-14-25(b) at
27 which an employee of a licensee may provide services for the licensee notwithstanding that the
28 location differs from the place of business named in the license or a branch certificate issued to the
29 licensee.

30 (33) "Retail installment contract" means any security agreement negotiated or executed in
31 this state, or under the laws of this state, including, but not limited to, any agreement in the nature
32 of a mortgage, conditional sale contract, or any other agreement whether or not evidenced by any
33 written instrument to pay the retail purchase price of goods, or any part thereof, in installments over
34 any period of time and pursuant to which any security interest is retained or taken by the retail seller

1 for the payment of the purchase price, or any part thereof, of the retail installment contract.

2 (34) "Sell" means to sell, to issue, or to deliver a check.

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

9 (36) "Simple interest" means interest computed on the principal balance outstanding
10 immediately prior to a payment for one plus the actual number of days between payments made on
11 a loan over the life of a loan.

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

14 (38) "Small-loan lender" means a lender engaged in the business of making small loans
15 within this state.

16 (39) "Stored value" means monetary value representing a claim against the issuer that is
17 stored on an electronic or digital medium and is evidenced by an electronic or digital record, and
18 that is intended and accepted for use as a means of redemption for money or monetary value or
19 payment for goods or services. The term does not include stored value that is redeemable by the
20 issuer exclusively in goods or services; stored value that is redeemable exclusively in goods or
21 services limited to transactions involving a defined merchant or location or set of locations, such
22 as a specific retailer or retail chain, college campus, or program points, miles, or other units issued
23 in connection with a customer affinity or rewards program, even if there is a secondary market for
24 the stored value.

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

28 (41) "Tangible net worth" means the aggregate assets of a licensee excluding all intangible
29 assets, less liabilities, as determined in accordance with United States generally accepted
30 accounting principles.

31 ~~(41)~~(42) "Third-party loan servicer" means a person or entity who or that, directly or
32 indirectly, engages in the business of servicing a loan secured by residential real estate located in
33 Rhode Island, for a personal, family, or household purpose, owed or due, or asserted to be owed or
34 due, another, or a person or entity that owns the servicing rights to a loan secured by residential

1 real estate located in Rhode Island whether or not that owner services the loan themselves or
2 contracts with another person or entity for the servicing.

3 ~~(42)~~(43) “Virtual currency”:

4 (i) Means a digital representation of value that:

5 (A) Is used as a medium of exchange, unit of account, or store of value; and

6 (B) Is not legal tender, whether or not denominated in legal tender; and

7 (ii) Does not include:

8 (A) A transaction in which a merchant grants, as part of an affinity or rewards program,
9 value that cannot be taken from or exchanged with the merchant for legal tender, bank credit, or
10 virtual currency;

11 (B) A digital representation of value issued by or on behalf of a publisher and used solely
12 within an online game, game platform, or family of games sold by the same publisher or offered
13 on the same game platform;

14 (C) Native digital token used in a proprietary blockchain service platform; or

15 (D) A gift certificate; store gift card; general-use prepaid card; or loyalty, award, or
16 promotional gift card, as these terms are defined in federal Regulation E, 12 C.F.R. § 1005.20(a),
17 without giving effect to any exception as specified in 31 C.F.R. § 1010.100(kkk) or any card, code
18 or device, or other device that can add funds to those products.

19 ~~(43)~~(44) “Writing” means hard-copy writing or electronic writing that meets the
20 requirements of § 42-127.1-2(7).

21 **19-14-5. Minimum capital.**

22 Each licensee, licensed pursuant to an application for license filed after June 30, 1995, shall
23 maintain the following minimum-net worth to be evidenced in accordance with regulations
24 promulgated by the director, or the director’s designee.

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

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

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

28 (4) Currency transmission licensees, ~~the sum of fifty thousand dollars (\$50,000). If a~~
29 ~~licensee limits its actions to virtual currency, the licensee may include in its calculation of net worth~~
30 ~~virtual currency, measured by the average value of the virtual currency in U.S. Dollar equivalent~~
31 ~~over the prior six (6) months.;~~

32 (i) Shall maintain at all times a tangible net worth of the greater of one hundred thousand
33 dollars (\$100,000) or three percent (3%) of total assets for the first one hundred million dollars
34 (\$100,000,000), two percent (2%) of additional assets for one hundred million dollars

1 (\$100,000,000) to one billion dollars (\$1,000,000,000), and five-tenths percent (.5%) of additional
2 assets for over one billion dollars (\$1,000,000,000);

3 (ii) Tangible net worth must be demonstrated at initial application by the applicant's most
4 recent audited or unaudited financial statements pursuant to § 19-14-1;

5 (iii) Notwithstanding the foregoing provisions of this section, the director shall have the
6 authority, for good cause shown, to exempt, in part or in whole, from the requirements of this
7 section any applicant or licensee; and

8 (5) Third-party loan servicers, the sum of one hundred thousand dollars (\$100,000).

9 SECTION 3. Section 19-14.1-10 of the General Laws in Chapter 19-14.1 entitled "Lenders
10 and Loan Brokers" is hereby amended to read as follows:

11 **19-14.1-10. Special exemptions.**

12 (a) The licensing provisions of chapter 14 of this title shall not apply to:

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

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

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

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

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

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

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

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

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

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

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

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

12 (6) The acquisition of retail or loan installment contracts by an entity whose sole business
13 in this state is acquiring them from federal banks receivers or liquidators;

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

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

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

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

27 SECTION 4. Section 19-14.10-3 of the General Laws in Chapter 19-14.10 entitled "An
28 Act Adopting the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2009" is
29 hereby amended to read as follows:

30 **19-14.10-3. Definitions.**

31 For purposes of this chapter, the following definitions shall apply:

32 (1) “Depository institution” has the same meaning as in section 3 of the Federal Deposit
33 Insurance Act, and includes any credit union.

34 (2) “Federal banking agencies” means the Board of Governors of the Federal Reserve

1 System, the Comptroller of the Currency, ~~the Director of the Office of Thrift Supervision~~, the
2 National Credit Union Administration, and the Federal Deposit Insurance Corporation.

3 (3) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or
4 grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

5 (4) "Individual" means a natural person.

6 (5)(i) "Loan processor or underwriter" means an individual who performs clerical or
7 support duties as an employee at the direction of, and subject to the supervision and instruction of,
8 a person licensed as a lender or as a loan broker, or exempt from licensing under chapter 14 or 14.1
9 of this title.

10 (ii) For purposes of subsection (5)(i), "clerical or support duties" may include subsequent
11 to the receipt of an application:

12 (A) The receipt, collection, distribution, and analysis of information common for the
13 processing or underwriting of a residential mortgage loan; and

14 (B) Communicating with a consumer to obtain the information necessary for the processing
15 or underwriting of a loan, to the extent that such communication does not include offering or
16 negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or
17 terms.

18 (iii) An individual engaging solely in loan processor or underwriter activities shall not
19 represent to the public, through advertising or other means of communicating or providing
20 information including the use of business cards, stationery, brochures, signs, rate lists, or other
21 promotional items, that such individual can or will perform any of the activities of a mortgage loan
22 originator.

23 (6)(i) "Mortgage loan originator" means:

24 (A) An individual who, for compensation or gain or in the expectation of compensation or
25 gain:

26 (I) Takes a residential mortgage loan application; or

27 (II) Offers or negotiates terms of a residential mortgage loan;

28 (B) Does not include an individual engaged solely as a loan processor or underwriter except
29 as otherwise provided in § 19-14.10-4(c);

30 (C) Does not include a person or entity who or that only performs real estate brokerage
31 activities and is licensed or registered in accordance with Rhode Island law, unless the person or
32 entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any
33 agent of such lender, mortgage broker, or other mortgage loan originator;

34 (D) Does not include a person or entity solely involved in extensions of credit relating to

1 timeshare plans, as that term is defined in 11 U.S.C. § 101(53D), as amended; and

2 (E) Does not include a person (or its employees) engaged in servicing mortgage loans. For
3 purposes of this exclusion, “servicing mortgage loans” means, on behalf of the note holder,
4 collecting and receiving payments, including payments of principal, interest, escrow amounts, and
5 other sums due, on obligations due and owing to the note holder pursuant to a residential mortgage
6 loan, and, when the borrower is in default or in reasonably foreseeable likelihood of default,
7 working with the borrower on behalf of the note holder and pursuant to the contract between the
8 person servicing mortgage loans and the note holder, to modify but not refinance, either temporarily
9 or permanently, the obligations, or otherwise finalizing collection of the obligation through the
10 foreclosure process.

11 (ii) “Real estate brokerage activity” means any activity that involves offering or providing
12 real estate brokerage services to the public, including:

13 (A) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of
14 real property;

15 (B) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of
16 real property;

17 (C) Negotiating, on behalf of any party, any portion of a contract relating to the sale,
18 purchase, lease, rental, or exchange of real property (other than in connection with providing
19 financing with respect to any such transaction);

20 (D) Engaging in any activity for which a person engaged in the activity is required to be
21 registered or licensed as a real estate agent or real estate broker under any applicable law; and

22 (E) Offering to engage in any activity, or act in any capacity, described in subsection
23 (6)(ii)(A), (B), (C), or (D) of this section.

24 (7) “Nationwide Multistate Licensing System” means a mortgage licensing system
25 developed and maintained by the Conference of State Bank Supervisors and the American
26 Association of Residential Mortgage Regulators for the licensing and registration of licensed
27 mortgage loan originators.

28 (8) “Nontraditional mortgage product” means any mortgage product other than a thirty-
29 year (30), fixed-rate mortgage.

30 (9) “Person” means a natural person, corporation, company, limited-liability company,
31 partnership, association, or any other entity however organized.

32 (10) “Registered mortgage loan originator” means any individual who:

33 (i) Meets the definition of mortgage loan originator and is an employee of:

34 (A) A depository institution;

1 (B) A subsidiary that is:
2 (I) Owned and controlled by a depository institution; and
3 (II) Regulated by a Federal banking agency; or
4 (C) An institution regulated by the Farm Credit Administration; and
5 (ii) Is registered with, and maintains a unique identifier through, the Nationwide Multistate
6 Licensing System.

7 (11) "Residential mortgage loan" means any loan primarily for personal, family, or
8 household use that is secured by a mortgage, deed of trust, or other equivalent, consensual security
9 interest on a dwelling (as defined in § 103(v) of the Truth in Lending Act) or residential real estate
10 upon which is constructed or intended to be constructed a dwelling (as so defined).

11 (12) "Residential real estate" means any real property located in Rhode Island upon which
12 is constructed, or intended to be constructed, a dwelling.

13 (13) "SAFE Act" means the Secure and Fair Enforcement for Mortgage Licensing Act,
14 comprising §§ 1501-1517 of the Housing and Economic Recovery Act of 2008, Pub. L. No. 110-
15 289.

16 (14) "Unique identifier" means a number or other identifier assigned by protocols
17 established by the Nationwide Multistate Licensing System.

18 SECTION 5. Section 19-33-8 of the General Laws in Chapter 19-33 entitled "Student Loan
19 Bill of Rights Act" is hereby amended to read as follows:

20 **19-33-8. Responsibilities of student loan servicers.**

21 (a) A student loan servicer shall provide annually, and at the request of a student loan
22 borrower, the terms of their loan, progress toward repayment, and eligibility for any loan relief
23 programs including, but not limited to, income-driven repayment plans, public service loan
24 forgiveness, forbearance, and deferment.

25 (b) A student loan servicer shall establish policies and procedures, and implement them
26 consistently, in order to facilitate evaluation of private student loan alternative repayment
27 arrangement requests, including providing accurate information regarding any private student loan
28 alternative repayment arrangements that may be available to the borrower through the promissory
29 note, or that may have been marketed to the borrower through marketing materials.

30 (c) A private student loan alternative repayment arrangement shall consider the
31 affordability of repayment plans for a distressed borrower, as well as the investor, guarantor, and
32 insurer guidelines, and previous outcome and performance information.

33 (d) If a student loan servicer offers private student loan repayment arrangements, a student
34 loan servicer shall consistently present and offer those arrangements to borrowers with similar

1 financial circumstances.

2 (e) If a borrower inquires of a servicer of private student loans about consolidating or
3 refinancing a federal student loan into a private student loan, the servicer of private student loans
4 must disclose in advance of the refinancing or consolidation, any benefits or protections exclusive
5 to federal student loans that may be lost as a result of the consolidation or refinancing.

6 (f)(1) A student loan servicer shall respond to a written inquiry from a student loan
7 borrower, or the representative of a student loan borrower, within ten (10) business days after
8 receipt of the request, and provide information relating to the request and, if applicable, the action
9 the student loan servicer will take to correct the account or an explanation for the student loan
10 servicer's position that the borrower's account is correct.

11 (2) The ten-day (10) period described in subsection (f)(1) may be extended for not more
12 than fifteen (15) days, if before the end of the ten-day (10) period the student loan servicer notifies
13 the borrower or the borrower's representative of the extension and the reasons for the delay in
14 responding.

15 (3) After receipt of a written request related to a credit reporting dispute on a borrower's
16 payment on a student education loan, a student loan servicer shall not furnish adverse information
17 to a consumer reporting agency regarding a payment that is the subject of the written inquiry.

18 (g) Except as provided by federal law or required by a student loan agreement, a student
19 loan servicer shall inquire of a borrower how to apply an overpayment to a student education loan.
20 A borrower's direction on how to apply an overpayment to a student education loan shall stay in
21 effect for any future overpayments during the term of a student education loan until the borrower
22 provides different directions. For purposes of this section, "overpayment" means a payment on a
23 student education loan in excess of the monthly amount due from a borrower on a student education
24 loan, also commonly referred to as a prepayment.

25 (h) Where a borrower has multiple loans at the same level of delinquency, a student loan
26 servicer shall apply partial payments in a manner that minimizes late fees and negative credit
27 reporting by applying such payments to satisfy as many individual loan payments as possible on a
28 borrower's account. For purposes of this section, "partial payment" means a payment on a student
29 loan account that contains multiple individual loans in an amount less than the amount necessary
30 to satisfy the outstanding payment due on all loans in the student loan account, also commonly
31 referred to as an underpayment.

32 (i) In the event of the sale, assignment, or other transfer of the servicing of a student
33 education loan that results in a change in the identity of the person to whom a student loan borrower
34 is required to send payments or direct any communication concerning the student education loan,

1 the following provisions apply:

2 (1) As a condition of a sale, an assignment, or any other transfer of the servicing of a student
3 education loan, a student loan lender shall require the new student loan servicer to honor all benefits
4 originally represented as available to a student loan borrower during the repayment of the student
5 education loan and preserve the availability of the benefits, including any benefits for which the
6 student loan borrower has not yet qualified.

7 (2) A student loan servicer shall transfer to the new student loan servicer all records
8 regarding the student loan borrower, the account of the student loan borrower, and the student
9 education loan of the student loan borrower.

10 (3) The records required under subsection (h)(2) shall include the repayment status of the
11 student loan borrower and any benefits associated with the student education loan of the student
12 loan borrower.

13 (4) The student loan servicer shall complete the transfer of records required under
14 subsection (h)(2) within forty-five (45) days after the sale, assignment, or other transfer of the
15 servicing of a student education loan.

16 (5) The parties shall notify all student loan borrowers impacted by the sale, assignment, or
17 other transfer of the servicing of a student education loan at least seven (7) days before the next
18 payment on the loan is due. Notice must include: The identity of the new loan holder and/or
19 servicer; the effective date of the transfer; the date on which the old servicer will no longer accept
20 payments; the date on which the new servicer will begin to accept payments; and contact and billing
21 information for loan payments.

22 (j) A student loan servicer that services a student education loan shall adopt policies and
23 procedures to verify that the student loan servicer has received all records regarding the student
24 loan borrower; the account of the student loan borrower; and the student education loan of the
25 student loan borrower, including the repayment status of the student loan borrower and any benefits
26 associated with the student education loan of the student loan borrower.

27 (k) When a prior student loan servicer receives a payment intended for the new student
28 loan servicer, the prior student loan servicer must promptly transfer the payment to the new
29 servicer, along with the date the prior servicer received the payment.

30 (l) When a new servicer receives a payment from a prior servicer under subsection (j), the
31 payment must be applied as of the date received by the prior servicer. A student loan servicer must
32 implement processes and controls to ensure a student loan borrower does not incur additional
33 interest, fees, or delinquency due to complications related to the sale, assignment, or other transfer
34 of the servicing of a student education loan.

1 (m) A student loan servicer shall not withhold student transcripts from borrowers that are
2 or were delinquent in student loan payments.

3 SECTION 6. Section 34-25.2-11 of the General Laws in Chapter 34-25.2 entitled "Rhode
4 Island Home Loan Protection Act" is hereby amended to read as follows:

5 **34-25.2-11. Exemption.**

6 The provisions of this chapter shall not apply to:

7 (1) Any national bank, federal savings bank, federal credit union, credit union, ~~or~~ financial
8 institution, or regulated institution as defined under § 19-1-1, or their wholly-owned subsidiary;
9 and

10 (2) The Federal Housing Administration, the Department of Veterans Affairs, or other state
11 or federal housing finance agencies.

12 SECTION 7. Section 19-14.3-2 of the General Laws in Chapter 19-14.3 entitled "Currency
13 Transmissions" is hereby repealed.

14 **~~19-14.3-2. Securities in lieu of bonds.~~**

15 ~~In lieu of the required surety bond or bonds, or of any portion as required by chapter 14,~~
16 ~~the applicant may deposit with the director, or the director's designee, with the financial~~
17 ~~institutions, credit unions, or national banks in this state that the applicant may designate and the~~
18 ~~director, or the director's designee, may approve, United States government/agency obligation or~~
19 ~~state obligations, to an aggregate amount, based upon principal amount or market value, whichever~~
20 ~~is lower, of not less than the amount of the required surety bond. The securities shall be deposited~~
21 ~~and held to secure the same obligations as would the surety bond, but the licensee shall be entitled~~
22 ~~to receive all interest and dividends thereon, shall have the right, with the approval of the director,~~
23 ~~or the director's designee, to substitute other securities for those deposited, and shall be required to~~
24 ~~substitute securities on the written order of the director, or the director's designee.~~

25 SECTION 8. Chapter 19-14.3 of the General Laws entitled "Currency Transmissions" is
26 hereby amended by adding thereto the following sections:

27 **19-14.3-2.1. Maintenance of permissible investments.**

28 (a) A licensee shall maintain at all times permissible investments that have a market value
29 computed in accordance with United States generally accepted accounting principles of not less
30 than the aggregate amount of all of its outstanding money transmission obligations.

31 (b) Except for permissible investments enumerated in § 19-14.3-2.2(a), the director, or
32 designee, with respect to any licensee, may by rule or order limit the extent to which a specific
33 investment maintained by a licensee within a class of permissible investments may be considered
34 a permissible investment, if the specific investment represents undue risk to customers, not

1 reflected in the market value of investments.

2 (c) Permissible investments, even if commingled with other assets of the licensee, are held
3 in trust for the benefit of the purchasers and holders of the licensee's outstanding money
4 transmission obligations in the event of insolvency, the filing of a petition by or against the licensee
5 under the United States Bankruptcy Code, 11 U.S.C. Section 101-110, as amended or recodified
6 from time to time, for bankruptcy or reorganization, the filing of a petition by or against the licensee
7 for receivership, the commencement of any other judicial or administrative proceeding for its
8 dissolution or reorganization, or in the event of an action by a creditor against the licensee who is
9 not a beneficiary of this statutory trust. No permissible investments impressed with a trust pursuant
10 to this section shall be subject to attachment, levy of execution, or sequestration by order of any
11 court, except for a beneficiary of this statutory trust.

12 (d) Upon the establishment of a statutory trust in accordance with subsection (c) of this
13 section or when any funds are drawn on a letter of credit pursuant to § 19-14.3-2.2(a)(4), the
14 director, or designee, shall notify the applicable regulator of each state in which the licensee is
15 licensed to engage in money transmission, if any, of the establishment of the trust or the funds
16 drawn on the letter of credit, as applicable. Notice shall be deemed satisfied if performed pursuant
17 to a multistate agreement or through the National Multistate Licensing Service (NMLS). Funds
18 drawn on a letter of credit, and any other permissible investments held in trust for the benefit of the
19 purchasers and holders of the licensee's outstanding money transmission obligations, are deemed
20 held in trust for the benefit of such purchasers and holders on a pro rata and equitable basis in
21 accordance with statutes pursuant to which permissible investments are required to be held in this
22 state, and other states, as applicable. Any statutory trust established hereunder shall be terminated
23 upon extinguishment of all of the licensee's outstanding money transmission obligations.

24 (e) The director, or designee, by rule or by order may allow other types of investments that
25 the director, or designee, determines are of sufficient liquidity and quality to be a permissible
26 investment. The director, or designee, is authorized to participate in efforts with other state
27 regulators to determine that other types of investments are of sufficient liquidity and quality to be
28 a permissible investment.

29 **19-14.3-2.2. Maintenance of permissible investments.**

30 (a) The following investments are permissible under § 19-14.3-2.1:

31 (1) Cash including demand deposits, savings deposits, and funds in such accounts held for
32 the benefit of the licensee's customers in a federally insured depository financial institution and
33 cash equivalents including ACH items in transit to the licensee and ACH items or international
34 wires in transit to a payee, cash in transit via armored car, cash in smart safes, cash in licensee-

1 owned locations, debit card or credit card-funded transmission receivables owed by any bank, or
2 money market mutual funds rated "AAA" by S&P, or the equivalent from any eligible rating
3 service;

4 (2) Certificates of deposit or senior debt obligations of an insured depository institution, as
5 defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813, as amended or
6 recodified from time to time, or as defined under the federal Credit Union Act, 12 U.S.C. Section
7 1781, as amended or recodified from time to time;

8 (3) An obligation of the United States or a commission, agency, or instrumentality thereof;
9 an obligation that is guaranteed fully as to principal and interest by the United States; or an
10 obligation of a state or a governmental subdivision, agency, or instrumentality thereof;

11 (4) The full drawable amount of an irrevocable standby letter of credit for which the stated
12 beneficiary is the director, or designee, that stipulates that the beneficiary need only draw a sight
13 draft under the letter of credit and present it to obtain funds up to the letter of credit amount within
14 seven (7) days of presentation of the items required by subsection (a)(4)(iii) of this section;

15 (i) The letter of credit must:

16 (A) Be issued by a federally insured depository financial institution, a foreign bank that is
17 authorized under federal law to maintain a federal agency or federal branch office in a state or
18 states, or a foreign bank that is authorized under state law to maintain a branch in a state that:

19 (I) Bears an eligible rating or whose parent company bears an eligible rating; and

20 (II) Is regulated, supervised, and examined by United States federal or state authorities
21 having regulatory authority over banks, credit unions, and trust companies;

22 (B) Be irrevocable, unconditional and indicate that it is not subject to any condition or
23 qualifications outside of the letter of credit;

24 (C) Not contain reference to any other agreements, documents or entities, or otherwise
25 provide for any security interest in the licensee; and

26 (D) Contain an issue date and expiration date, and expressly provide for automatic
27 extension, without a written amendment, for an additional period of one year from the present or
28 each future expiration date, unless the issuer of the letter of credit notifies the director, or designee,
29 in writing by certified or registered mail or courier mail or other receipted means, at least sixty (60)
30 days prior to any expiration date, that the irrevocable letter of credit will not be extended.

31 (ii) In the event of any notice of expiration or non-extension of a letter of credit issued
32 under subsection (a)(4)(i)(D) of this section, the licensee shall be required to demonstrate to the
33 satisfaction of the director, or designee, fifteen (15) days prior to expiration, that the licensee
34 maintains and will maintain permissible investments in accordance with § 19-14.3-2.1(a) upon the

1 expiration of the letter of credit. If the licensee is not able to do so, the director, or designee, may
2 draw on the letter of credit in an amount up to the amount necessary to meet the licensee's
3 requirements to maintain permissible investments in accordance with § 19-14.3-2.1(a). Any such
4 draw shall be offset against the licensee's outstanding money transmission obligations. The drawn
5 funds shall be held in trust by the director, or designee, or the designated agent, to the extent
6 authorized by law, as agent for the benefit of the purchasers and holders of the licensee's
7 outstanding money transmission obligations.

8 (iii) The letter of credit shall provide that the issuer of the letter of credit will honor, at
9 sight, a presentation made by the beneficiary to the issuer of the following documents on or prior
10 to the expiration date of the letter of credit:

11 (A) The original letter of credit including any amendments; and

12 (B) A written statement from the beneficiary stating that any of the following events have
13 occurred:

14 (I) The filing of a petition by or against the licensee under the United States Bankruptcy
15 Code, 11 U.S.C. Section 101-110, as amended or recodified from time to time, for bankruptcy or
16 reorganization;

17 (II) The filing of a petition by or against the licensee for receivership, or the commencement
18 of any other judicial or administrative proceeding for its dissolution or reorganization;

19 (III) The seizure of assets of a licensee by the director, or designee, pursuant to an
20 emergency order issued in accordance with applicable law, on the basis of an action, violation, or
21 condition that has caused or is likely to cause the insolvency of the licensee; or

22 (IV) The beneficiary has received notice of expiration or non-extension of a letter of credit
23 and the licensee failed to demonstrate to the satisfaction of the beneficiary that the licensee will
24 maintain permissible investments in accordance with § 19-14.3-2.1(a) upon the expiration or non-
25 extension of the letter of credit.

26 (iv) The director, or designee, may designate an agent to serve on the director's behalf as
27 beneficiary to a letter of credit so long as the agent and letter of credit meet requirements established
28 by the director, or designee. The director's agent may serve as agent for multiple licensing
29 authorities for a single irrevocable letter of credit if the proceeds of the drawable amount for the
30 purposes of subsection (a)(4) of this section are assigned to the director.

31 (v) The director, or designee, is authorized and encouraged to participate in multistate
32 processes designed to facilitate the issuance and administration of letters of credit, including, but
33 not limited to, services provided by the NMLS and State Regulatory Registry, LLC.

34 (5) One hundred percent (100%) of the surety bond provided for under chapter 14.3 of title

1 19 that exceeds the average daily money transmission liability in this state.

2 (b) Unless permitted by the director, or designee, by rule or by order to exceed the limit as
3 set forth herein, the following investments are permissible under § 19-14.3-2.1 to the extent
4 specified:

5 (1) Receivables that are payable to a licensee from its authorized delegates in the ordinary
6 course of business that are less than seven (7) days old, up to fifty percent (50%) of the aggregate
7 value of the licensee's total permissible investments;

8 (2) Of the receivables permissible under § 19-14.3-2.2(b)(I), receivables that are payable
9 to a licensee from a single authorized delegate in the ordinary course of business may not exceed
10 ten percent (10%) of the aggregate value of the licensee's total permissible investments.

11 (3) The following investments are permissible up to twenty percent (20%) per category and
12 combined up to fifty percent (50%) of the aggregate value of the licensee's total permissible
13 investments:

14 (i) A short-term (up to six (6) months) investment bearing an eligible rating;

15 (ii) Commercial paper bearing an eligible rating;

16 (iii) A bill, note, bond, or debenture bearing an eligible rating;

17 (iv) U.S. tri-party repurchase agreements collateralized at one hundred percent (100%) or
18 more with U.S. government or agency securities, municipal bonds, or other securities bearing an
19 eligible rating;

20 (v) Money market mutual funds rated less than "AAA" and equal to or higher than "A-" by
21 S&P, or the equivalent from any other eligible rating service; and

22 (vi) A mutual fund or other investment fund composed solely and exclusively of one or
23 more permissible investments listed in subsections (a)(1) through (a)(3) of this section.

24 (4) Cash (including demand deposits, savings deposits, and funds in such accounts held for
25 the benefit of the licensee's customers) at foreign depository institutions are permissible up to ten
26 percent (10%) of the aggregate value of the licensee's total permissible investments if the licensee
27 has received a satisfactory rating in its most recent examination and the foreign depository
28 institution:

29 (i) Has an eligible rating;

30 (ii) Is registered under the Foreign Account Tax Compliance Act;

31 (iii) Is not located in any country subject to sanctions from the Office of Foreign Asset
32 Control; and

33 (iv) Is not located in a high-risk or non-cooperative jurisdiction as designated by the
34 Financial Action Task Force.

1 SECTION 9. This act shall take effect upon passage.

=====
LC001640
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO FINANCIAL INSTITUTIONS -- POWERS AND OPERATIONS

1 This act would amend outdated provisions of the banking statutes and the home loan
2 protection act, add consumer protections, including minimum capital requirements and limits on
3 investments, for currency transmitters including crypto currency, add a consumer protection for
4 student loan borrowers and remove the provision allowing deposit of securities in lieu of bond.

5 This act would take effect upon passage.

=====
LC001640
=====