

2016 -- S 2656

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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 - SMALL LOAN LENDERS

Introduced By: Senators Pichardo, Metts, Jabour, Raptakis, and Nesselbush

Date Introduced: February 25, 2016

Referred To: Senate Finance

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. 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
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;

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; or

31 (v) Any other advance of money; ~~or.~~

32 (vi) ~~Any transaction such as those commonly known as "payday loans," "payday~~
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
6 sells a loan within this state for others in the primary market, or offers to do so. A loan broker
7 shall also mean any person who is the nominal mortgagee or creditor in a table-funding
8 transaction. A 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
11 representative 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 "payday loans," "payday 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) "Insurance premium finance agreement" means an agreement by which an insured,
8 or prospective insured, promises to pay to an insurance premium finance company the amount
9 advanced, or to be advanced, under the agreement to an insurer or to an insurance producer, in
10 payment of a premium, or premiums, on an insurance contract, or contracts, together with interest
11 and a service charge, as authorized and limited by this title;

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

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

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

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

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

34 (24) "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
3 application, including, without limitation, the rendering of services, including loan underwriting,
4 obtaining verifications, credit reports or appraisals, communicating with the applicant and/or the
5 lender or loan broker, and/or other loan processing and origination services, for consideration by
6 a lender or 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 (25) "Loan underwriting" shall mean a loan process that involves the analysis of risk
11 with respect to the decision whether to make a loan to a loan applicant based on credit,
12 employment, assets, and other factors, including evaluating a loan applicant against a lender's
13 various lending criteria for creditworthiness, making a determination for the lender as to whether
14 the applicant meets the lender's pre-established credit standards, and/or making a
15 recommendation regarding loan approval;

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

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

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

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

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

34 (31) "Provisional employee" means a natural person who, pursuant to a written

1 agreement between the natural person and a wholly owned subsidiary of a financial holding
2 company, as defined in The Bank Holding Company Act of 1956, as amended, a bank-holding
3 company, savings-bank-holding company, or thrift holding company, is an exclusive agent for the
4 subsidiary with respect to mortgage loan originations, and the subsidiary: (a) Holds a valid loan
5 broker's license; and (b) Enters into a written agreement with the director, or the director's
6 designee, to include:

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

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

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

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

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

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

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

1 (36) "Third-party loan servicer" means a person who, directly or indirectly, engages in
2 the business of servicing a loan made to a resident of Rhode Island, or a loan secured by
3 residential real estate located in Rhode Island, for a personal, family, or household purpose, owed
4 or due or asserted to be owed or due another; and

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

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

9 **19-14.1-10. Special exemptions.** -- (a) The licensing provisions of chapter 14 of this title
10 shall not apply to:

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

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

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

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

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

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

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

34 (1) Loans to corporations, joint ventures, partnerships, limited liability companies or

1 other business entities;

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

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

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

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

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

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

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

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

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

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

27 **19-14.2-1. Maximum rate on small loans not authorized by chapter.** -- (a) No person,
28 except as authorized by this chapter, shall directly or indirectly charge, contract for, or receive
29 any interest, discount, or consideration greater than provided by this chapter upon the loan, use,
30 or sale of credit of the amount or value of five thousand dollars (\$5,000) or less.

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

1 (c) No loan of the amount or value of five thousand dollars (\$5,000) or less for which a
2 greater rate of interest, consideration, or charges than is permitted by this chapter has been
3 charged, contracted for, or received, wherever made, shall be enforced in this state, and every
4 person in any way participating therein in this state shall be subject to the provisions of this
5 chapter, provided that this section shall not apply to loans legally made in any other state,
6 commonwealth, or district which then has in effect a regulatory small loan law similar in
7 principal to this chapter.

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

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

17 **19-14.4-4. Fees for services. --** No licensee shall:

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

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

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

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

27 **19-14.4-5. Posting of charges -- Endorsement -- Receipt. --** (a) In every location
28 licensed pursuant to this chapter, there shall be at all times posted in a conspicuous place within
29 the licensed premises a complete and unambiguous schedule of all fees for cashing checks;
30 ~~deferred deposit transactions~~ expressed as ~~both~~ a dollar amount ~~and an annual percentage rate,~~
31 and the initial issuance of any identification card.

32 (b) Before a licensee shall deposit, with any regulated institution or other insured-
33 deposit-taking institution organized under the laws of the United States, a check cashed by the
34 licensee, the check must be endorsed with the name under which the licensee is doing business

1 and must include the words "licensed check cashing services".

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

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

10 SECTION 5. Section 19-14.4-5.1 of the General Laws in Chapter 19-14.4 entitled
11 "Check Cashing" is hereby repealed.

12 ~~19-14.4-5.1. Customer checks -- Deferred deposits. -- (a) A check casher may defer the~~
13 ~~deposit of a personal check written by a customer for a term of no less than thirteen (13) days,~~
14 ~~pursuant to the provisions of this section. The face amount of the check shall not exceed five~~
15 ~~hundred dollars (\$500).~~

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

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

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

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

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

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

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

1 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 the provisions of the general laws allowing deferred deposit
2 providers, also known as "payday lenders."

3 This act would take effect upon passage.

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