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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO FINANCIAL INSTITUTIONS -- SMALL LOAN LENDERS

Introduced By: Representatives Vella-Wilkinson, Williams, Hull, Henries, Donovan, and
McEntee

Date Introduced: June 04, 2021

Referred To: House Corporations

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.**

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

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

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

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

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

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

17 (ii) Receiving money or monetary value for transmission or holding funds incidental to
18 transmission within the United States or to locations abroad by any and all means, including
19 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) The loan solicitation is done by an individual with a physical presence in this state; ~~or~~

31 (E) The lender maintains an office in this state; ~~or~~

32 (F) The loan is secured by a motor vehicle registered 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 debit
25 the customer's deposit account, [or in exchange for the customer's motor vehicle title](#) and where the
26 parties agree either, that the check will not be cashed or deposited, or that customer's deposit
27 account will not be debited, [or that the customer's motor vehicle title not be assigned](#), until a
28 designated future date.

29 [\(vii\) Loans secured by motor vehicle titles.](#)

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

- 1 (i) The loan is secured by real property located in this state;
- 2 (ii) An application for a loan is taken or received by an employee, agent, or representative
3 of the loan broker within this state;
- 4 (iii) The loan closes within this state;
- 5 (iv) The loan solicitation is done by an individual with a physical presence in this state; or
- 6 (v) The loan broker maintains an office in this state.
- 7 (vi) The loan is secured by a motor vehicle registered in this state.

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

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

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

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

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

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

33 (20) "Nationwide Multistate Licensing System" means a system involving more than one
34 state, the District of Columbia, or the Commonwealth of Puerto Rico and that is established to

1 facilitate the sharing of regulatory information and the licensing, application, reporting, and
2 payment processes, by electronic or other means, for mortgage lenders and loan brokers and other
3 licensees required to be licensed under this chapter.

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

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

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

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

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

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

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

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

33 (29) "Principal owner" means any person or entity who or that owns, controls, votes, or has
34 a beneficial interest in, directly or indirectly, ten percent (10%) or more of the outstanding capital

1 stock and/or equity interest of a licensee.

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

9 (i) Providing loan closing services;

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

11 (iii) Rendering of appraisal services.

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

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

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

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

28 (32) "Sell" means to sell, to issue, or to deliver a check.

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

1 (34) "Simple interest" means interest computed on the principal balance outstanding
2 immediately prior to a payment for one plus the actual number of days between payments made on
3 a loan over the life of a loan.

4 (35) "Small loan" means a loan of less than five thousand dollars (\$5,000), not secured by
5 real estate [or a motor vehicle title](#), made pursuant to the provisions of chapter 14.2 of this title.

6 (36) "Small-loan lender" means a lender engaged in the business of making small loans
7 within this state.

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

17 (38) "Table-funding transaction" means a transaction in which there is a contemporaneous
18 advance of funds by a lender and an assignment by the mortgagee or creditor of the loan to the
19 lender.

20 (39) "Third-party loan servicer" means a person or entity who or that, directly or indirectly,
21 engages in the business of servicing a loan secured by residential real estate located in Rhode Island,
22 for a personal, family, or household purpose, owed or due, or asserted to be owed or due, another,
23 or a person or entity that owns the servicing rights to a loan secured by residential real estate located
24 in Rhode Island whether or not that owner services the loan themselves or contracts with another
25 person or entity for the servicing.

26 (40) "Virtual currency":

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

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

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

30 (ii) Does not include:

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

34 (B) A digital representation of value issued by or on behalf of a publisher and used solely

1 within an online game, game platform, or family of games sold by the same publisher or offered
2 on the same game platform;

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

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

8 (41) "Writing" means hard-copy writing or electronic writing that meets the requirements
9 of § 42-127.1-2(7).

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

12 ~~19-14.1-7. Assignment of wages simultaneous with loan -- Liens on furniture.~~
13 Assignment of wages simultaneous with loan -- Liens on furniture and motor vehicles.

14 No assignment of, or order for, payment of any salary, wages, commissions, or other
15 compensation for services, earned or to be earned, given to secure any loan made by any licensee
16 under this chapter, shall be valid unless the amount of the loan is paid to the borrower
17 simultaneously with its execution; nor shall the assignment or order, or any chattel mortgage or
18 other lien on household furniture [or on a motor vehicle](#) then in the possession and use of the
19 borrower be valid unless it is in writing, signed in person by the borrower, nor if the borrower is
20 married unless it is signed in person by both husband and wife, provided that written assent of a
21 spouse shall not be required when husband and wife have been living separate and apart for a period
22 of at least five (5) months prior to the making of the assignment, order, mortgage, or lien.

23 SECTION 3. Section 19-14.2-7 of the General Laws in Chapter 19-14.2 entitled "Small
24 Loan Lenders" is hereby amended to read as follows:

25 ~~19-14.2-7. Assignment of wages simultaneous with loan -- Liens on furniture.~~
26 Assignment of wages simultaneous with loan -- Liens on furniture and motor vehicles.

27 No assignment of, or order for, payment of any salary, wages, commissions, or other
28 compensation for services, earned or to be earned, given to secure any loan made by any small loan
29 lender under this chapter, shall be valid unless the amount of the loan is paid to the borrower
30 simultaneously with its execution; nor shall the assignment or order, or any chattel mortgage or
31 other lien on household furniture [or on a motor vehicle](#) then in the possession and use of the
32 borrower, be valid unless it is in writing, signed in person by the borrower, nor if the borrower is
33 married unless it is signed in person by both husband and wife, provided that written assent of a
34 spouse shall not be required when husband and wife have been living separate and apart for a period

1 of at least five (5) months prior to the making of the assignment, order, mortgage, or lien.

2 SECTION 4. 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 protect borrowers using motor vehicle titles as collateral for loans.
- 2 This act would take effect upon passage.

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