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LC00310

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO FINANCIAL INSTITUTIONS-SMALL LOAN LENDERS

Introduced By: Representatives Diaz, Carnevale, Almeida, Slater, and Segal

Date Introduced: January 28, 2010

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 19-14-1 and 19-14-22 of the General Laws in Chapter 19-14
2 entitled "Licensed Activities" are 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 14.1, 14.2, 14.3, 14.4, 14.6, 14.8 and 14.10 of this title:

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

9 (2) "Deliver" means to deliver a check to the first person who in payment for the check
10 makes or purports to make a remittance of or against the face amount of the check, whether or not
11 the deliverer also charges a fee in addition to the face amount, and whether or not the deliverer
12 signs the check;

13 (3) "Electronic money transfer" means receiving money for transmission within the
14 United States or to locations abroad by any means including, but not limited to, wire, facsimile or
15 other electronic transfer system;

16 (4) (i) "Lender" means any person who makes or funds a loan within this state with the
17 person's own funds, regardless of whether the person is the nominal mortgagee or creditor on the
18 instrument evidencing the loan;

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

- 1 (A) The loan is secured by real property located in this state;
- 2 (B) An application for a loan is taken by an employee, agent, or representative of the
3 lender within this state;
- 4 (C) The loan closes within this state;
- 5 (D) The loan solicitation is done by an individual with a physical presence in this state;
- 6 or
- 7 (E) The lender maintains an office in this state.
- 8 (iii) The term "lender" shall also include any person engaged in a transaction whereby
9 the person makes or funds a loan within this state using the proceeds of an advance under a line
10 of credit over which proceeds the person has dominion and control and for the repayment of
11 which the person is unconditionally liable. This transaction is not a table funding transaction. A
12 person is deemed to have dominion and control over the proceeds of an advance under a line of
13 credit used to fund a loan regardless of whether:
- 14 (A) The person may, contemporaneously with or shortly following the funding of the
15 loan, assign or deliver to the line of credit lender one or more loans funded by the proceeds of an
16 advance to the person under the line of credit;
- 17 (B) The proceeds of an advance are delivered directly to the settlement agent by the line
18 of credit lender, unless the settlement agent is the agent of the line of credit lender;
- 19 (C) One or more loans funded by the proceeds of an advance under the line of credit is
20 purchased by the line of credit lender; or
- 21 (D) Under the circumstances as set forth in regulations adopted by the director or the
22 director's designee pursuant to this chapter;
- 23 (5) "Licensee" means any person licensed under this chapter [and incorporated in the state](#)
24 [or qualified to do business in the state](#);
- 25 (6) "Loan" means any advance of money or credit including, but not limited to:
- 26 (i) Loans secured by mortgages;
- 27 (ii) Insurance premium finance agreements;
- 28 (iii) The purchase or acquisition of retail installment contracts or advances to the holders
29 of those contracts;
- 30 (iv) Educational loans;
- 31 (v) Any other advance of money; or
- 32 (vi) Any transaction such as those commonly known as "pay day loans," "pay day
33 advances," or "deferred presentment loans," in which a cash advance is made to a customer in
34 exchange for the customer's personal check, or in exchange for the customer's authorization to

1 debit the customer's deposit account, and where the parties agree either that the check will not be
2 cashed or deposited, or that customer's deposit account will not be debited, until a designated
3 future date.

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

- 9 (i) The loan is secured by real property located in this state;
- 10 (ii) An application for a loan is taken or received by an employee, agent or representative
11 of the loan broker within this state;
- 12 (iii) The loan closes within this state;
- 13 (iv) The loan solicitation is done by an individual with a physical presence in this state;
- 14 or
- 15 (v) The loan broker maintains an office in this state.

16 (8) "Personal money order" means any instrument for the transmission or payment of
17 money in relation to which the purchaser or remitter appoints or purports to appoint the seller as
18 his or her agent for the receipt, transmission, or handling of money, whether the instrument is
19 signed by the seller or by the purchaser or remitter or some other person;

20 (9) "Primary market" means the market in which loans are made to borrowers by lenders,
21 whether or not through a loan broker or other conduit;

22 (10) "Principal owner" means any person who owns, controls, votes or has a beneficial
23 interest in, directly or indirectly, ten percent (10%) or more of the outstanding capital stock
24 and/or equity interest of a licensee;

25 (11) "Sell" means to sell, to issue, or to deliver a check;

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

28 (13) "Small loan lender" means a lender engaged in the business of making small loans
29 within this state;

30 (14) "Table funding transaction" means a transaction in which there is a
31 contemporaneous advance of funds by a lender and an assignment by the mortgagee or creditor of
32 the loan to the lender;

33 (15) "Check casher" means a person or entity that, for compensation, engages, in whole
34 or in part, in the business of cashing checks;

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

7 (17) "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. section
19 501(c)(3) nonprofit organization, in the operation of which no member, director, officer, partner,
20 employee, agent, or other affiliated person profits financially other than receiving reasonable
21 salaries if applicable;

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

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

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

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

8 (A) Providing loan closing services;

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

10 (C) Rendering of appraisal services.

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

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

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

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

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

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

1 institution or banking institution;

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

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

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

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

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

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

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

31 **19-14-22. Reporting requirements.** -- (a) Each licensee shall annually on or before
32 March 31 file a report with the director or the director's designee giving any relevant information
33 that the director or the director's designee may reasonably require concerning the business and
34 operations during the preceding calendar year of each licensed place of business conducted by the

1 licensee within the state. The information provided to the director or the director's designee shall
2 include, without limitation, and as applicable to such licensee: (1) The total number and dollar
3 amount of checks sold; (2) The total number and dollar amount of money transfers made; (3) The
4 total number and dollar amount of checks cashed; (4) The total number and dollar amount of
5 loans made; (5) The total number of branches or agents owned or operated by the licensee within
6 the state; and (6) The total amount of fees generated by each branch or agent owned or operated
7 by the licensee within the state. The report shall be made under oath and shall be in a form
8 prescribed by the director or the director's designee. At the time of filing each report, the sum of
9 fifty-five dollars (\$55.00) per license and fifty-five dollars (\$55.00) per branch certificate shall be
10 paid by the licensee to the director for the use of the state. Any licensee who shall delay
11 transmission of any report required by the provisions of this title beyond the limit, unless
12 additional time is granted, in writing, for good cause, by the director or the director's designee,
13 shall pay a penalty of twenty-five dollars (\$25) for each day of the delay. In lieu of a report by
14 any licensed mortgage loan originator, the director or the director's designee may accept a report
15 by the licensed lender or licensed loan broker who employed the licensed mortgage loan
16 originator for the activities of the licensed mortgage loan originator while employed by such
17 lender or loan broker during the applicable calendar year.

18 (b) Any licensee shall, within twenty-four (24) hours after actual knowledge, notify the
19 director or the director's designee, in writing, of the occurrence of any of the following events: the
20 institution of bankruptcy, receivership, reorganization or insolvency proceedings regarding a
21 licensee, the institution of any adverse government action against a licensee, or any felony
22 indictment or conviction of any licensee or any officers, directors, owners, employees, members
23 or partners thereof, as the case may be.

24 (c) Each mortgage loan originator licensee shall, on or before March 31, 2010 and every
25 March 31st thereafter, file with the director or the director's designee evidence acceptable to the
26 director or the director's designee that said loan originator licensee has filed with the nationwide
27 mortgage licensing system and registry a report of condition, which shall be in such form and
28 shall contain such information as the nationwide mortgage licensing system and registry may
29 require along with evidence that the licensee, during the twelve (12) months immediately
30 preceding March 31, satisfied the requirements of section 19-14.10-10 with respect to continuing
31 education.

32 (d) Both the mortgage loan originator and his or her licensed employer shall promptly
33 notify the director or the director's designee, in writing, within fifteen (15) business days of the
34 termination of employment or services of a mortgage loan originator.

1 SECTION 2. This act shall take effect upon passage.

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LC00310
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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 require businesses operating as or taking part in small loan lending,
2 money transfers or check cashing to provide additional information when submitting their annual
3 license renewal. Said information would include the net profit for each location listed under their
4 license; whether or not they have a policy to guide their community reinvestment, and if so to
5 provide a copy of such; and, a list of donations made, including amount and to which institutions
6 or organizations.

7 This act would take effect upon passage.

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