
SENATE BILL 5671

State of Washington

58th Legislature

2003 Regular Session

By Senators Keiser, Winsley, Doumit and Kohl-Welles

Read first time 02/05/2003. Referred to Committee on Financial Services, Insurance & Housing.

1 AN ACT Relating to mortgage lending; amending RCW 31.04.015 and
2 31.04.102; and adding new sections to chapter 31.04 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 31.04 RCW
5 to read as follows:

6 The legislature finds that abusive mortgage lending has become an
7 increasing problem in this state, exacerbating the loss of equity in
8 homes and causing the number of foreclosures to increase in recent
9 years. Abusive lending has threatened the viability of many
10 communities and caused decreases in homeownership. While the
11 marketplace appears to operate effectively for conventional mortgages,
12 too many homeowners find themselves victims of overreaching lenders who
13 provide loans with unnecessarily high costs and terms that are
14 unnecessary to secure repayment of the loan. The legislature finds
15 that as competition and self-regulation have not eliminated the abusive
16 terms from home-secured loans, the consumer protection provisions of
17 this act are necessary to encourage lending at reasonable rates with
18 reasonable terms.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 31.04 RCW
2 to read as follows:

3 (1) A licensee refinancing an existing residential mortgage loan or
4 making a loan secured by a subordinate lien against real property must
5 have reasonable grounds for believing that the loan will provide a net
6 tangible benefit to the borrower.

7 (2) Making a residential mortgage loan that does not provide a net
8 tangible benefit to the borrower is unconscionable and is a violation
9 of this act.

10 **Sec. 3.** RCW 31.04.015 and 2001 c 81 s 1 are each amended to read
11 as follows:

12 The definitions set forth in this section apply throughout this
13 chapter unless the context clearly requires a different meaning.

14 (1) "Person" includes individuals, partnerships, associations,
15 limited liability companies, limited liability partnerships, trusts,
16 corporations, and all other legal entities.

17 (2) "License" means a single license issued under the authority of
18 this chapter with respect to a single place of business.

19 (3) "Licensee" means a person to whom one or more licenses have
20 been issued.

21 (4) "Director" means the director of financial institutions.

22 (5) "Insurance" means life insurance, disability insurance,
23 property insurance, involuntary unemployment insurance, and such other
24 insurance as may be authorized by the insurance commissioner.

25 (6) "Add-on method" means the method of precomputing interest
26 payable on a loan whereby the interest to be earned is added to the
27 principal balance and the total plus any charges allowed under this
28 chapter is stated as the loan amount, without further provision for the
29 payment of interest except for failure to pay according to loan terms.
30 The director may adopt by rule a more detailed explanation of the
31 meaning and use of this method.

32 (7) "Simple interest method" means the method of computing interest
33 payable on a loan by applying the annual percentage interest rate or
34 its periodic equivalent to the unpaid balances of the principal of the
35 loan outstanding for the time outstanding with each payment applied
36 first to any unpaid penalties, fees, or charges, then to accumulated
37 interest, and the remainder of the payment applied to the unpaid

1 balance of the principal until paid in full. In using such method,
2 interest shall not be payable in advance nor compounded, except that on
3 a loan secured by real estate, a licensee may collect at the time of
4 the loan closing up to but not exceeding forty-five days of prepaid
5 interest. The director may adopt by rule a more detailed explanation
6 of the meaning and use of this method.

7 (8) "Applicant" means a person applying for a license under this
8 chapter.

9 (9) "Borrower" means any person who consults with or retains a
10 licensee or person subject to this chapter in an effort to obtain or
11 seek information about obtaining a loan, regardless of whether that
12 person actually obtains such a loan.

13 (10) "Loan" means a sum of money lent at interest or for a fee or
14 other charge and includes both open-end and closed-end loan
15 transactions.

16 (11) "Loan originator" means a person employed, either directly or
17 indirectly, or retained as an independent contractor by a licensee, to
18 make or assist a person in applying to obtain a loan.

19 (12) "Making a loan" means closing a loan in a person's name, or
20 advancing, offering to advance, or making a commitment to advance funds
21 to a borrower for a loan.

22 (13) "Mortgage broker" means the same as defined in RCW 19.146.010,
23 except that for purposes of this chapter, a licensee or person subject
24 to this chapter cannot receive compensation as both a consumer loan
25 licensee making the loan and as a mortgage broker in the same loan
26 transaction.

27 (14) "Officer" means an official appointed by the company for the
28 purpose of making business decisions or corporate decisions.

29 (15) "Principal" means any person who controls, directly or
30 indirectly through one or more intermediaries, alone or in concert with
31 others, a ten percent or greater interest in a partnership; company;
32 association or corporation; or a limited liability company, and the
33 owner of a sole proprietorship.

34 (16) "Senior officer" means an officer of a licensee at the vice-
35 president level or above.

36 (17) "Third party service provider" means any person other than the
37 licensee or a mortgage broker who provides goods or services to the
38 licensee or borrower in connection with the preparation of the

1 borrower's loan and includes, but is not limited to, credit reporting
2 agencies, real estate brokers or salespersons, title insurance
3 companies and agents, appraisers, structural and pest inspectors, or
4 escrow companies.

5 (18) "Residential mortgage loan" means a loan secured by:

6 (a) A mortgage or deed of trust on real estate in this state upon
7 which there is located or there is to be located a structure or
8 structures designed principally for occupancy of from one to four
9 families which is or will be occupied by a borrower as the borrower's
10 principal dwelling; or

11 (b) A security interest on a manufactured or mobile home in this
12 state which is or will be occupied by a borrower as the borrower's
13 principal dwelling.

14 NEW SECTION. Sec. 4. A new section is added to chapter 31.04 RCW
15 to read as follows:

16 (1) A prepayment penalty may not be charged by a licensee for a
17 prepayment on a residential mortgage loan made on a date that is more
18 than twenty-four months from the origination date of the loan.

19 (2) A prepayment penalty may not be charged by a licensee on a
20 residential mortgage loan if the existence of the prepayment penalty
21 was not fully or timely disclosed in writing clearly (a) describing the
22 circumstances in which a prepayment penalty will be assessed, and (b)
23 stating the amount of the prepayment penalty that the borrower would be
24 required to pay if the loan was paid in full at any time after the
25 rescission period of the loan.

26 (3) The department of financial institutions may order a waiver of
27 a prepayment penalty if, upon a complaint from a consumer, it finds
28 that the licensee charging the prepayment penalty has violated RCW
29 31.04.027.

30 NEW SECTION. Sec. 5. A new section is added to chapter 31.04 RCW
31 to read as follows:

32 (1) A borrower refinancing an existing residential mortgage loan or
33 receiving a loan secured by a subordinate lien against real property is
34 presumed not to have received a net tangible benefit if:

35 (a) The loan refinances any unsecured debt and bears an annual
36 percentage rate higher than that of the unsecured debt; or

1 (b) The loan will cause the borrower to lose one or more of the
2 benefits, such as a below-market interest rate or nonstandard repayment
3 terms, of an existing residential mortgage loan that originated with or
4 was subsidized or guaranteed by or through a state, local, or tribal
5 government or nonprofit organization.

6 (2) A borrower refinancing an existing residential mortgage loan or
7 receiving a loan secured by a second or subsequent lien against real
8 property is presumed to have received a net tangible benefit if the
9 loan meets one or more of the following criteria:

10 (a) The loan is a conventional mortgage loan as defined in rule by
11 the director;

12 (b) The loan retires a residential mortgage loan or loans, the
13 borrower receives a cash disbursement from the loan, the payments on
14 the new loan are no higher than the payments on the old loan, and the
15 cash proceeds disbursed to the borrower exceed the total closing costs
16 of the loan;

17 (c)(i) The interest rate on the loan does not exceed by more than
18 six percentage points for first-lien loans, or by more than eight
19 percentage points for subordinate-lien loans, the yield on treasury
20 securities having comparable periods of maturity to the loan maturity
21 as of the fifteenth day of the month immediately preceding the month in
22 which the application for the extension of credit is received by the
23 licensee;

24 (ii) The total points and fees payable by the borrower at or before
25 loan closing does not exceed the greater of six percent of the total
26 loan amount, or five hundred dollars; and

27 (iii) The borrower's combined monthly payment amount to service all
28 of the borrower's debt obligations does not exceed fifty percent of the
29 borrower's verified gross monthly income as reflected in the
30 application for the loan; or

31 (d) The licensee has obtained from the borrower a signed and
32 notarized statement indicating that the loan provides them with a net
33 tangible benefit and identifies that benefit in the statement.

34 (3) For the purposes of this section, "total closing costs" means
35 all costs paid by the borrower to obtain the loan, including but not
36 limited to points, fees, and other costs assessed at closing, whether
37 financed in the loan or paid directly at closing.

1 **Sec. 6.** RCW 31.04.102 and 2002 c 346 s 1 are each amended to read
2 as follows:

3 (1) For all loans made by a licensee that are not secured by a lien
4 on real property, the licensee must make disclosures in compliance with
5 the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12
6 C.F.R. Sec. 226, and all other applicable federal laws and regulations.

7 (2) For all loans made by a licensee that are secured by a lien on
8 real property, the licensee shall provide to each borrower within three
9 business days following receipt of a loan application a written
10 disclosure containing an itemized estimation and explanation of all
11 fees and costs that the borrower is required to pay in connection with
12 obtaining a loan from the licensee. A good faith estimate of a fee or
13 cost shall be provided if the exact amount of the fee or cost is not
14 available when the disclosure is provided. Disclosure in a form which
15 complies with the requirements of the truth in lending act, 15 U.S.C.
16 Sec. 1601 and regulation Z, 12 C.F.R. Sec. 226, the real estate
17 settlement procedures act and regulation X, 24 C.F.R. Sec. 3500, and
18 all other applicable federal laws and regulations, as now or hereafter
19 amended, shall be deemed to constitute compliance with this disclosure
20 requirement. Each licensee shall comply with all other applicable
21 federal and state laws and regulations.

22 (3) In addition, for all loans made by the licensee that are
23 secured by a lien on real property, the licensee must provide to the
24 borrower an estimate of the annual percentage rate on the loan and a
25 disclosure of whether or not the loan contains a prepayment penalty
26 within three days of receipt of a loan application. The annual
27 percentage rate must be calculated in compliance with the truth in
28 lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Sec. 226.
29 If a licensee provides the borrower with a disclosure in compliance
30 with the requirements of the truth in lending act within three business
31 days of receipt of a loan application, then the licensee has complied
32 with this subsection. If the director determines that the federal
33 government has required a disclosure that substantially meets the
34 objectives of this subsection, then the director may make a
35 determination by rule that compliance with this federal disclosure
36 requirement constitutes compliance with this subsection.

37 (4) A licensee that charges fees that benefit the licensee, and

1 gives the borrower a good faith estimate of those fees, may not charge
2 an amount for those fees at settlement that exceeds the good faith
3 estimate by more than ten percent.

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