
SUBSTITUTE SENATE BILL 5759

State of Washington

61st Legislature

2009 Regular Session

By Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Berkey, Benton, and Hobbs)

READ FIRST TIME 02/13/09.

1 AN ACT Relating to regulating the business practices of consumer
2 loan companies for compliance with the secure and fair enforcement for
3 mortgage licensing act of 2008; amending RCW 31.04.015, 31.04.025,
4 31.04.035, 31.04.045, 31.04.102, 31.04.105, 31.04.145, and 31.04.165;
5 adding new sections to chapter 31.04 RCW; creating a new section; and
6 providing effective dates.

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

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

10 The legislature finds and declares that accessibility to credit is
11 vital to the citizens of this state. The legislature declares that it
12 is essential for the protection of citizens of this state and the
13 stability of the state's economy that standards for licensing and
14 regulation of the business practices of lenders be imposed. The
15 legislature further finds that the activities of lenders and mortgage
16 loan originators and the origination or offering of financing for
17 residential real property have a direct, valuable, and immediate impact
18 upon this state's consumers, this state's economy, the neighborhoods
19 and communities of this state, and the housing and real estate

1 industry. The legislature therefore declares that this act is
2 necessary to encourage responsible lending in all credit transactions,
3 to protect borrowers, and to preserve access to credit in the
4 residential real estate lending market.

5 **Sec. 2.** RCW 31.04.015 and 2001 c 81 s 1 are each amended to read
6 as follows:

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

9 ~~((1) "Person" includes individuals, partnerships, associations,
10 limited liability companies, limited liability partnerships, trusts,
11 corporations, and all other legal entities.~~

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

14 ~~(3) "Licensee" means a person to whom one or more licenses have
15 been issued.~~

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

17 ~~(5) "Insurance" means life insurance, disability insurance,
18 property insurance, involuntary unemployment insurance, and such other
19 insurance as may be authorized by the insurance commissioner.~~

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

27 ~~(7) "Simple interest method" means the method of computing interest
28 payable on a loan by applying the annual percentage interest rate or
29 its periodic equivalent to the unpaid balances of the principal of the
30 loan outstanding for the time outstanding with each payment applied
31 first to any unpaid penalties, fees, or charges, then to accumulated
32 interest, and the remainder of the payment applied to the unpaid
33 balance of the principal until paid in full. In using such method,
34 interest shall not be payable in advance nor compounded, except that on
35 a loan secured by real estate, a licensee may collect at the time of
36 the loan closing up to but not exceeding forty five days of prepaid~~

1 interest. ~~The director may adopt by rule a more detailed explanation~~
2 ~~of the meaning and use of this method.~~

3 ~~(8) "Applicant" means a person applying for a license under this~~
4 ~~chapter.~~

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

9 ~~(10) "Loan" means a sum of money lent at interest or for a fee or~~
10 ~~other charge and includes both open end and closed end loan~~
11 ~~transactions.~~

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

15 ~~(12) "Making a loan" means closing a loan in a person's name, or~~
16 ~~advancing, offering to advance, or making a commitment to advance funds~~
17 ~~to a borrower for a loan.~~

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

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

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

30 ~~(16) "Senior officer" means an officer of a licensee at the vice~~
31 ~~president level or above.~~

32 ~~(17) "Third party service provider" means any person other than the~~
33 ~~licensee or a mortgage broker who provides goods or services to the~~
34 ~~licensee or borrower in connection with the preparation of the~~
35 ~~borrower's loan and includes, but is not limited to, credit reporting~~
36 ~~agencies, real estate brokers or salespersons, title insurance~~
37 ~~companies and agents, appraisers, structural and pest inspectors, or~~
38 ~~escrow companies.))~~

(1) "Add-on method" means the method of

1 precomputing interest payable on a loan whereby the interest to be
2 earned is added to the principal balance and the total plus any charges
3 allowed under this chapter is stated as the loan amount, without
4 further provision for the payment of interest except for failure to pay
5 according to loan terms. The director may adopt by rule a more
6 detailed explanation of the meaning and use of this method.

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

9 (3) "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 (4) "Depository institution" has the same meaning as in section 3
14 of the federal deposit insurance act on the effective date of this
15 section, and includes credit unions.

16 (5) "Director" means the director of financial institutions.

17 (6) "Federal banking agencies" means the board of governors of the
18 federal reserve system, comptroller of the currency, director of the
19 office of thrift supervision, national credit union administration, and
20 federal deposit insurance corporation.

21 (7) "Individual servicing a mortgage loan" means a person on behalf
22 of a lender or servicer licensed by this state, who collects or
23 receives payments including payments of principal, interest, escrow
24 amounts, and other amounts due, on existing obligations due and owing
25 to the licensed lender or servicer for a residential mortgage loan when
26 the borrower is in default, or in reasonably foreseeable likelihood of
27 default, working with the borrower and the licensed lender or servicer,
28 collects data and makes decisions necessary to modify either
29 temporarily or permanently certain terms of those obligations, or
30 otherwise finalizing collection through the foreclosure process.

31 (8) "Insurance" means life insurance, disability insurance,
32 property insurance, involuntary unemployment insurance, and such other
33 insurance as may be authorized by the insurance commissioner.

34 (9) "License" means a single license issued under the authority of
35 this chapter with respect to a single place of business.

36 (10) "Licensee" means a person to whom one or more licenses have
37 been issued.

1 (11) "Loan" means a sum of money lent at interest or for a fee or
2 other charge and includes both open-end and closed-end loan
3 transactions.

4 (12) "Loan processor" means an individual who performs clerical or
5 support duties as an employee at the direction of and subject to the
6 supervision and instruction of a person licensed, or exempt from
7 licensing, under chapter 19.146 RCW.

8 (13) "Making a loan" means advancing, offering to advance, or
9 making a commitment to advance funds to a borrower for a loan.

10 (14) "Mortgage broker" means the same as defined in RCW 19.146.010,
11 except that for purposes of this chapter, a licensee or person subject
12 to this chapter cannot receive compensation as both a consumer loan
13 licensee making the loan and as a consumer loan licensee acting as the
14 mortgage broker in the same loan transaction.

15 (15)(a) "Mortgage loan originator" means an individual who for
16 compensation or gain (i) takes a residential mortgage loan application,
17 or (ii) offers or negotiates terms of a residential mortgage loan.
18 "Mortgage loan originator" does not include any individual who performs
19 purely administrative or clerical tasks; and does not include a person
20 or entity solely involved in extensions of credit relating to timeshare
21 plans, as that term is defined in section 101(53D) of Title 11, United
22 States Code. For the purposes of this definition, administrative or
23 clerical tasks means the receipt, collection, and distribution of
24 information common for the processing of a loan in the mortgage
25 industry and communication with a consumer to obtain information
26 necessary for the processing of a residential mortgage loan.

27 (b) "Mortgage loan originator" does not include a person or entity
28 that only performs real estate brokerage activities and is licensed or
29 registered in accordance with applicable state law, unless the person
30 or entity is compensated by a lender, a mortgage broker, or other
31 mortgage loan originator or by any agent of such a lender, mortgage
32 broker, or other mortgage loan originator. For the purposes of this
33 act the term "real estate brokerage activity" means any activity that
34 involves offering or providing real estate brokerage services to the
35 public, including:

36 (i) Acting as a real estate agent or real estate broker for a
37 buyer, seller, lessor, or lessee of real property;

1 (ii) Bringing together parties interested in the sale, purchase,
2 lease, rental, or exchange of real property;

3 (iii) Negotiating, on behalf of any party, any portion of a
4 contract relating to the sale, purchase, lease, rental, or exchange of
5 real property, other than in connection with providing financing with
6 respect to such a transaction;

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

10 (v) Offering to engage in any activity, or act in any capacity,
11 described in (b)(i) through (iv) of this subsection.

12 (c) This subsection does not apply to an individual servicing a
13 mortgage loan before July 1, 2011.

14 (16) "Nationwide mortgage licensing system and registry" means a
15 mortgage licensing system developed and maintained by the conference of
16 state bank supervisors and the American association of residential
17 mortgage regulators for the licensing and registration of mortgage loan
18 originators.

19 (17) "Officer" means an official appointed by the company for the
20 purpose of making business decisions or corporate decisions.

21 (18) "Person" includes individuals, partnerships, associations,
22 limited liability companies, limited liability partnerships, trusts,
23 corporations, and all other legal entities.

24 (19) "Principal" means any person who controls, directly or
25 indirectly through one or more intermediaries, alone or in concert with
26 others, a ten percent or greater interest in a partnership; company;
27 association or corporation; or a limited liability company, and the
28 owner of a sole proprietorship.

29 (20) "Registered mortgage loan originator" means any individual who
30 meets the definition of mortgage loan originator and is an employee of
31 a depository institution; a subsidiary that is owned and controlled by
32 a depository institution and regulated by a federal banking agency; or
33 an institution regulated by the farm credit administration and is
34 registered with, and maintains a unique identifier through, the
35 nationwide mortgage licensing system and registry.

36 (21) "Residential mortgage loan" means any loan primarily for
37 personal, family, or household use that is secured by a mortgage, deed
38 of trust, or other equivalent consensual security interest on a

1 dwelling, as defined in section 103(v) of the truth in lending act, or
2 residential real estate upon which is constructed or intended to be
3 constructed a dwelling.

4 (22) "S.A.F.E. act" means the secure and fair enforcement for
5 mortgage licensing act of 2008, Title V of the housing and economic
6 recovery act of 2008 ("HERA"), P.L. 110-289, effective July 30, 2008.

7 (23) "Senior officer" means an officer of a licensee at the vice
8 president level or above.

9 (24) "Simple interest method" means the method of computing
10 interest payable on a loan by applying the annual percentage interest
11 rate or its periodic equivalent to the unpaid balances of the principal
12 of the loan outstanding for the time outstanding with each payment
13 applied first to any unpaid penalties, fees, or charges, then to
14 accumulated interest, and the remainder of the payment applied to the
15 unpaid balance of the principal until paid in full. In using such
16 method, interest shall not be payable in advance nor compounded, except
17 that on a loan secured by real estate, a licensee may collect at the
18 time of the loan closing up to but not exceeding forty-five days of
19 prepaid interest. The director may adopt by rule a more detailed
20 explanation of the meaning and use of this method.

21 (25) "Third-party service provider" means any person other than the
22 licensee or a mortgage broker who provides goods or services to the
23 licensee or borrower in connection with the preparation of the
24 borrower's loan and includes, but is not limited to, credit reporting
25 agencies, real estate brokers or salespersons, title insurance
26 companies and agents, appraisers, structural and pest inspectors, or
27 escrow companies.

28 (26) "Unique identifier" means a number or other identifier
29 assigned by protocols established by the nationwide mortgage licensing
30 system and registry.

31 **Sec. 3.** RCW 31.04.025 and 2008 c 78 s 1 are each amended to read
32 as follows:

33 ~~((Each loan made to a resident of this state by a licensee is~~
34 ~~subject to the authority and restrictions of this chapter, unless such~~
35 ~~loan is made under the authority of chapter 63.14 RCW. This chapter~~
36 ~~shall not apply to any person doing business under and as permitted by~~
37 ~~any law of this state or of the United States relating to banks,~~

1 ~~savings banks, trust companies, savings and loan or building and loan~~
2 ~~associations, or credit unions, nor to any pawnbroking business~~
3 ~~lawfully transacted under and as permitted by any law of this state~~
4 ~~regulating pawnbrokers, nor to any loan of credit made pursuant to a~~
5 ~~credit card plan.))~~

6 (1) This chapter does not apply to the following:

7 (a) Any person doing business under, and as permitted by, any law
8 of this state or of the United States relating to banks, savings banks,
9 trust companies, savings and loan or building and loan associations, or
10 credit unions;

11 (b) Entities making loans under chapter 19.60 RCW (pawnbroking);

12 (c) Entities making loans under chapter 63.14 RCW (retail
13 installment sales of goods and services);

14 (d) Entities making loans under chapter 31.45 RCW (check cashers
15 and sellers);

16 (e) Any person making loans primarily for business, commercial, or
17 agricultural purposes, or making loans made to government or government
18 agencies or instrumentalities, or to organizations as defined in the
19 federal truth in lending act;

20 (f) Entities making loans under chapter 43.185 RCW (housing trust
21 fund);

22 (g) Entities making loans under programs of the United States
23 department of agriculture, department of housing and urban development,
24 or other federal government program that provides funding or access to
25 funding for single-family housing developments or grants to low-income
26 individuals for the purchase or repair of single-family housing; and

27 (h) Entities making loans which are not residential mortgage loans
28 under a credit card plan.

29 (2) The director may, at his or her discretion, waive applicability
30 of the consumer loan company licensing provisions of this chapter to
31 other persons, not including individuals subject to the S.A.F.E. act,
32 making loans when the director determines it necessary to facilitate
33 commerce and protect consumers. The director may adopt rules
34 interpreting this section.

35 **Sec. 4.** RCW 31.04.035 and 2008 c 78 s 2 are each amended to read
36 as follows:

37 No person may engage in the business of making secured or unsecured

1 loans of money, credit, or things in action without first obtaining and
2 maintaining a license in accordance with this chapter, except those
3 exempt under RCW 31.04.025.

4 **Sec. 5.** RCW 31.04.045 and 2001 c 81 s 4 are each amended to read
5 as follows:

6 (1) Application for a license under this chapter must be (~~in~~
7 ~~writing and~~) made to the nationwide mortgage licensing system and
8 registry or in the form prescribed by the director. The application
9 must contain at least the following information:

10 (a) The name and the business addresses of the applicant;

11 (b) If the applicant is a partnership or association, the name of
12 every member;

13 (c) If the applicant is a corporation, the name, residence address,
14 and telephone number of each officer and director;

15 (d) The street address, county, and municipality from which
16 business is to be conducted; and

17 (e) Such other information as the director may require by rule.

18 (2) As part of or in connection with an application for any license
19 under this section, or periodically upon license renewal, each officer,
20 director, and owner applicant shall furnish information concerning his
21 or her identity, including fingerprints for submission to the
22 Washington state patrol, the federal bureau of investigation, the
23 nationwide mortgage licensing system and registry, or any governmental
24 agency or entity authorized to receive this information for a state and
25 national criminal history background check; personal history;
26 experience; business record; purposes; and other pertinent facts, as
27 the director may reasonably require. As part of or in connection with
28 an application for a license under this chapter, or periodically upon
29 license renewal, the director is authorized to receive criminal history
30 record information that includes nonconviction data as defined in RCW
31 10.97.030. The department may only disseminate nonconviction data
32 obtained under this section to criminal justice agencies. This section
33 does not apply to financial institutions regulated under chapters 31.12
34 and 31.13 RCW and Titles 30, 32, and 33 RCW.

35 (3) In order to reduce the points of contact which the federal
36 bureau of investigation may have to maintain, the director may use the

1 nationwide mortgage licensing system and registry as a channeling agent
2 for requesting information from and distributing information to the
3 department of justice or any governmental agency.

4 (4) In order to reduce the points of contact which the director may
5 have to maintain, the director may use the nationwide mortgage
6 licensing system and registry as a channeling agent for requesting and
7 distributing information to and from any source so directed by the
8 director.

9 (5) At the time of filing an application for a license under this
10 chapter, each applicant shall pay to the director or through the
11 nationwide mortgage licensing system and registry an investigation fee
12 and the license fee in an amount determined by rule of the director to
13 be sufficient to cover the director's costs in administering this
14 chapter.

15 ~~((+3))~~ (6) Each applicant shall file and maintain a surety bond,
16 approved by the director, executed by the applicant as obligor and by
17 a surety company authorized to do a surety business in this state as
18 surety, whose liability as such surety shall not exceed in the
19 aggregate the penal sum of the bond. The penal sum of the bond shall
20 be ~~((one hundred thousand dollars for each licensed location up to and~~
21 ~~including five licensed locations, and an additional ten thousand~~
22 ~~dollars for each licensed location in excess of five licensed~~
23 ~~locations, except that a licensee who makes a loan secured by real~~
24 ~~property shall maintain at a minimum a surety bond with a penal sum of~~
25 ~~not less than four hundred thousand dollars))~~ a minimum of thirty
26 thousand dollars and based on the annual dollar amount of loans
27 originated. The bond shall run to the state of Washington as obligee
28 for the use and benefit of the state and of any person or persons who
29 may have a cause of action against the obligor under this chapter. The
30 bond shall be conditioned that the obligor as licensee will faithfully
31 conform to and abide by this chapter and all the rules adopted under
32 this chapter. The bond will pay to the state and any person or persons
33 having a cause of action against the obligor all moneys that may become
34 due and owing to the state and those persons under and by virtue of
35 this chapter. In lieu of a surety bond, if the applicant is a
36 Washington business corporation, the applicant may maintain unimpaired
37 capital, surplus, and long-term subordinated debt in an amount that at
38 any time its outstanding promissory notes or other evidences of debt

1 (other than long-term subordinated debt) in an aggregate sum do not
2 exceed three times the aggregate amount of its unimpaired capital,
3 surplus, and long-term subordinated debt. The director may define
4 qualifying "long-term subordinated debt" for purposes of this section.

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

7 (1) For all loans made by a licensee that are not secured by a lien
8 on real property, the licensee must make disclosures in compliance with
9 the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12
10 C.F.R. (~~Sec. [Part]~~) Part 226, and all other applicable federal laws
11 and regulations.

12 (2) For all loans made by a licensee that are secured by a lien on
13 real property, the licensee shall provide to each borrower within three
14 business days following receipt of a loan application a written
15 disclosure containing an itemized estimation and explanation of all
16 fees and costs that the borrower is required to pay in connection with
17 obtaining a loan from the licensee. A good faith estimate of a fee or
18 cost shall be provided if the exact amount of the fee or cost is not
19 available when the disclosure is provided. Disclosure in a form which
20 complies with the requirements of the truth in lending act, 15 U.S.C.
21 Sec. 1601 and regulation Z, 12 C.F.R. (~~Sec. [Part]~~) Part 226, the
22 real estate settlement procedures act and regulation X, 24 C.F.R. Sec.
23 3500, and all other applicable federal laws and regulations, as now or
24 hereafter amended, shall be deemed to constitute compliance with this
25 disclosure requirement. Each licensee shall comply with all other
26 applicable federal and state laws and regulations.

27 (3) In addition, for all loans made by the licensee that are
28 secured by a lien on real property, the licensee must provide to the
29 borrower an estimate of the annual percentage rate on the loan and a
30 disclosure of whether or not the loan contains a prepayment penalty
31 within three days of receipt of a loan application. The annual
32 percentage rate must be calculated in compliance with the truth in
33 lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. (~~Sec.~~
34 ~~[Part]~~) Part 226. If a licensee provides the borrower with a
35 disclosure in compliance with the requirements of the truth in lending
36 act within three business days of receipt of a loan application, then
37 the licensee has complied with this subsection. If the director

1 determines that the federal government has required a disclosure that
2 substantially meets the objectives of this subsection, then the
3 director may make a determination by rule that compliance with this
4 federal disclosure requirement constitutes compliance with this
5 subsection.

6 (4) In addition for all consumer loans made by the licensee that
7 are secured by a lien on real property, the licensee must provide the
8 borrower with the one-page disclosure summary required in RCW
9 19.144.020.

10 **Sec. 7.** RCW 31.04.105 and 2001 c 81 s 10 are each amended to read
11 as follows:

12 Every licensee may:

13 (1) Lend money at a rate that does not exceed twenty-five percent
14 per annum as determined by the simple interest method of calculating
15 interest owed;

16 (2) In connection with the making of a loan, charge the borrower a
17 nonrefundable, prepaid, loan origination fee not to exceed four percent
18 of the first twenty thousand dollars and two percent thereafter of the
19 principal amount of the loan advanced to or for the direct benefit of
20 the borrower, which fee may be included in the principal balance of the
21 loan;

22 (3) Agree with the borrower for the payment of fees to third
23 parties other than the licensee who provide goods or services to the
24 licensee in connection with the preparation of the borrower's loan,
25 including, but not limited to, credit reporting agencies, title
26 companies, appraisers, structural and pest inspectors, and escrow
27 companies, when such fees are actually paid by the licensee to a third
28 party for such services or purposes and may include such fees in the
29 amount of the loan. However, no charge may be collected unless a loan
30 is made, except for reasonable fees properly incurred in connection
31 with the appraisal of property by a qualified, independent,
32 professional, third-party appraiser selected by the borrower and
33 approved by the lender or in the absence of borrower selection,
34 selected by the lender;

35 (4) In connection with the making of a loan secured by real estate,
36 when the borrower actually obtains a loan, agree with the borrower to
37 pay a fee to a mortgage broker that is not owned by the licensee or

1 under common ownership with the licensee and that performed services in
2 connection with the origination of the loan. A licensee may not
3 receive compensation as a mortgage broker in connection with any loan
4 made by the licensee;

5 (5) Charge and collect a penalty of not more than ten (~~cents or~~
6 ~~less on each dollar~~) percent of any installment payment delinquent ten
7 days or more;

8 (6) Collect from the debtor reasonable attorneys' fees, actual
9 expenses, and costs incurred in connection with the collection of a
10 delinquent debt, a repossession, or a foreclosure when a debt is
11 referred for collection to an attorney who is not a salaried employee
12 of the licensee;

13 (7) Make open-end loans as provided in this chapter;

14 (8) Charge and collect a fee for dishonored checks in an amount
15 approved by the director; and

16 (9) In accordance with Title 48 RCW, sell insurance covering real
17 and personal property, covering the life or disability or both of the
18 borrower, and covering the involuntary unemployment of the borrower.

19 **Sec. 8.** RCW 31.04.145 and 2001 c 81 s 11 are each amended to read
20 as follows:

21 (1) For the purpose of discovering violations of this chapter or
22 securing information lawfully required under this chapter, the director
23 may at any time, either personally or by designees, investigate or
24 examine the loans and business and, wherever located, the books,
25 accounts, records, papers, documents, files, and other information used
26 in the business of every licensee and of every person who is engaged in
27 the business making or assisting in the making of loans at interest
28 rates authorized by this chapter, whether the person acts or claims to
29 act as principal or agent, or under or without the authority of this
30 chapter. For these purposes, the director or designated
31 representatives shall have free access to the offices and places of
32 business, books, accounts, papers, documents, other information,
33 records, files, safes, and vaults of all such persons. The director or
34 persons designated by the director may require the attendance of and
35 examine under oath all persons whose testimony may be required about
36 the loans or the business or the subject matter of any investigation,
37 examination, or hearing and may require such person to produce books,

1 accounts, papers, records, files, and any other information the
2 director or designated persons deem relevant to the inquiry. The
3 director may require the production of original books, accounts,
4 papers, records, files, and other information; may require that such
5 original books, accounts, papers, records, files, and other information
6 be copied; or may make copies himself or herself or by designee of such
7 original books, accounts, papers, records, files, or other information.
8 If a licensee or person does not attend and testify, or does not
9 produce the requested books, accounts, papers, records, files, or other
10 information, then the director or designated persons may issue a
11 subpoena or subpoena duces tecum requiring attendance or compelling
12 production of the books, accounts, papers, records, files, or other
13 information.

14 (2) The director shall make such periodic examinations of the
15 affairs, business, office, and records of each licensee as determined
16 by rule.

17 (3) Every licensee examined or investigated by the director or the
18 director's designee shall pay to the director the cost of the
19 examination or investigation of each licensed place of business as
20 determined by rule by the director.

21 (4) In order to carry out the purposes of this section, the
22 director may:

23 (a) Retain attorneys, accountants, or other professionals and
24 specialists as examiners, auditors, or investigators to conduct or
25 assist in the conduct of examinations or investigations;

26 (b) Enter into agreements or relationships with other government
27 officials or regulatory associations in order to improve efficiencies
28 and reduce regulatory burden by sharing resources, standardized or
29 uniform methods or procedures, and documents, records, information, or
30 evidence obtained under this section;

31 (c) Use, hire, contract, or employ public or privately available
32 analytical systems, methods, or software to examine or investigate the
33 licensee, individual, or person subject to this act;

34 (d) Accept and rely on examination or investigation reports made by
35 other government officials, within or without this state;

36 (e) Accept audit reports made by an independent certified public
37 accountant for the licensee, individual, or person subject to this act
38 in the course of that part of the examination covering the same general

1 subject matter as the audit and may incorporate the audit report in the
2 report of the examination, report of investigation, or other writing of
3 the director; or

4 (f) Assess the licensee, individual, or person subject to this act
5 the cost of the services in (a) of this subsection.

6 NEW SECTION. Sec. 9. A new section is added to chapter 31.04 RCW
7 to read as follows:

8 The authority of this chapter remains in effect, whether such a
9 licensee, individual, or person subject to this act acts or claims to
10 act under any licensing or registration law of this state, or claims to
11 act without such an authority.

12 NEW SECTION. Sec. 10. A new section is added to chapter 31.04 RCW
13 to read as follows:

14 An individual defined as a mortgage loan originator shall not
15 engage in the business of a mortgage loan originator without first
16 obtaining and maintaining annually a license under this act. Each
17 licensed mortgage loan originator must register with and maintain a
18 valid unique identifier issued by the nationwide mortgage licensing
19 system and registry.

20 NEW SECTION. Sec. 11. A new section is added to chapter 31.04 RCW
21 to read as follows:

22 The following are exempt from licensing as mortgage loan
23 originators under this chapter:

24 (1) Registered mortgage loan originators, or any individual
25 required to be registered;

26 (2) A licensed attorney who negotiates the terms of a residential
27 mortgage loan on behalf of a client as an ancillary matter to the
28 attorney's representation of the client, unless the attorney is
29 compensated by a lender, a mortgage broker, or other mortgage loan
30 originator or by any agent of a lender, mortgage broker, or other
31 mortgage loan originator; or

32 (3) Any individual who offers or negotiates terms of a residential
33 mortgage loan with or on behalf of an immediate family member.

1 NEW SECTION. **Sec. 12.** A new section is added to chapter 31.04 RCW
2 to read as follows:

3 An independent contractor may not engage in residential mortgage
4 loan origination activities as a loan processor unless the independent
5 contractor obtains and maintains a license under this chapter. Each
6 independent contractor loan processor licensed as a mortgage loan
7 originator must have and maintain a valid unique identifier issued by
8 the nationwide mortgage licensing system and registry.

9 NEW SECTION. **Sec. 13.** A new section is added to chapter 31.04 RCW
10 to read as follows:

11 An individual engaging solely in loan processor activities, who
12 does not represent to the public, through advertising or other means of
13 communicating or providing information including the use of business
14 cards, stationery, brochures, signs, rate lists, or other promotional
15 items, that such an individual can or will perform any of the
16 activities of a mortgage loan originator is not required to obtain and
17 maintain a mortgage loan originator license under this chapter.

18 NEW SECTION. **Sec. 14.** A new section is added to chapter 31.04 RCW
19 to read as follows:

20 Applicants for a mortgage loan originator license shall apply on a
21 form as prescribed by the director. Each form must contain content as
22 set forth by rule, regulation, instruction, or procedure of the
23 director and may be changed or updated as necessary by the director in
24 order to carry out the purposes of this chapter, but must not be
25 inconsistent with that required by the nationwide mortgage licensing
26 system and registry.

27 NEW SECTION. **Sec. 15.** A new section is added to chapter 31.04 RCW
28 to read as follows:

29 In order to fulfill the purposes of this act, the director is
30 authorized to establish relationships or contracts with the nationwide
31 mortgage licensing system and registry or other entities designated by
32 the nationwide mortgage licensing system and registry to collect and
33 maintain records and process transaction fees or other fees related to
34 licensees or other persons subject to this chapter.

1 NEW SECTION. **Sec. 16.** A new section is added to chapter 31.04 RCW
2 to read as follows:

3 (1) As part of or in connection with an application for any license
4 under this section, or periodically upon license renewal, the mortgage
5 loan originator applicant shall furnish information concerning his or
6 her identity, including fingerprints for submission to the Washington
7 state patrol, the federal bureau of investigation, the nationwide
8 mortgage licensing system and registry, or any governmental agency or
9 entity authorized to receive this information for a state and national
10 criminal history background check; personal history; experience;
11 business record; purposes; and other pertinent facts, as the director
12 may reasonably require. As part of or in connection with an
13 application for a license under this chapter, or periodically upon
14 license renewal, the director is authorized to receive criminal history
15 record information that includes nonconviction data as defined in RCW
16 10.97.030. The department may only disseminate nonconviction data
17 obtained under this section to criminal justice agencies. This section
18 does not apply to financial institutions regulated under chapters 31.12
19 and 31.13 RCW and Titles 30, 32, and 33 RCW.

20 (2) As part of or in connection with an application for any license
21 under this section, the mortgage loan originator applicant shall
22 furnish information pertaining to personal history and experience in a
23 form prescribed by the nationwide mortgage licensing system and
24 registry, including (a) the submission of authorization for the
25 nationwide mortgage licensing system and registry and the director to
26 obtain an independent credit report obtained from a consumer reporting
27 agency described in section 603(p) of the federal fair credit reporting
28 act, and (b) information related to any administrative, civil, or
29 criminal findings by any governmental jurisdiction.

30 (3) In order to reduce the points of contact which the federal
31 bureau of investigation may have to maintain, the director may use the
32 nationwide mortgage licensing system and registry as a channeling agent
33 for requesting information from and distributing information to the
34 department of justice or any governmental agency.

35 (4) In order to reduce the points of contact which the director may
36 have to maintain, the director may use the nationwide mortgage
37 licensing system and registry as a channeling agent for requesting and

1 distributing information to and from any source so directed by the
2 director.

3 NEW SECTION. **Sec. 17.** A new section is added to chapter 31.04 RCW
4 to read as follows:

5 (1) The application for a mortgage loan originator license must
6 contain at least the following information:

7 (a) The name, address, date of birth, and social security number of
8 the mortgage loan originator applicant, and any other names, dates of
9 birth, or social security numbers previously used by the mortgage loan
10 originator applicant, unless waived by the director; and

11 (b) Other information regarding the mortgage loan originator
12 applicant's background, experience, character, and general fitness as
13 the director may require by rule, or as deemed necessary by the
14 nationwide mortgage licensing system and registry.

15 (2) At the time of filing an application for a license or a license
16 renewal under this chapter, each mortgage loan originator applicant
17 shall pay to the director through the nationwide mortgage licensing
18 system and registry the application or renewal fee of up to one hundred
19 fifty dollars. The director shall deposit the moneys in the financial
20 services regulation fund.

21 NEW SECTION. **Sec. 18.** A new section is added to chapter 31.04 RCW
22 to read as follows:

23 (1) The director shall issue and deliver a mortgage loan originator
24 license if, after investigation, the director makes at a minimum the
25 following findings:

26 (a) The applicant has paid the required license fees;

27 (b) The applicant has met the requirements of this chapter;

28 (c) The applicant has never had a mortgage loan originator license
29 revoked in any governmental jurisdiction, except that, for the purposes
30 of this subsection, a subsequent formal vacation of such revocation is
31 not a revocation;

32 (d) The applicant has not been convicted of, or pled guilty or nolo
33 contendere to, a felony in a domestic, foreign, or military court (i)
34 during the seven-year period preceding the date of the application for
35 licensing and registration; or (ii) at any time preceding the date of

1 application, if the felony involved an act of fraud, dishonesty, breach
2 of trust, or money laundering;

3 (e) The applicant has demonstrated financial responsibility,
4 character, and general fitness such as to command the confidence of the
5 community and to warrant a determination that the mortgage loan
6 originator will operate honestly, fairly, and efficiently within the
7 purposes of this act. For the purposes of this section, an applicant
8 has not demonstrated financial responsibility when the applicant shows
9 disregard in the management of his or her financial condition. A
10 determination that an individual has shown disregard in the management
11 of his or her financial condition may include, but is not limited to,
12 an assessment of: Current outstanding judgments, except judgments
13 solely as a result of medical expenses; current outstanding tax liens
14 or other government liens and filings; foreclosures within the last
15 three years; or a pattern of seriously delinquent accounts within the
16 past three years;

17 (f) The applicant has completed the prelicensing education
18 requirement as required by this chapter;

19 (g) The applicant has passed a written test that meets the test
20 requirement as required by this chapter;

21 (h) The consumer loan licensee that the applicant works for has met
22 the surety bond requirement as required by this chapter;

23 (i) The applicant has not been found to be in violation of this
24 chapter or rules adopted under this chapter;

25 (j) The mortgage loan originator licensee has completed, during the
26 calendar year preceding a licensee's annual license renewal date,
27 continuing education as required by this chapter.

28 (2) If the director finds the conditions of this section have not
29 been met, the director shall not issue the mortgage loan originator
30 license. The director shall notify the applicant of the denial and
31 return to the mortgage loan originator applicant any remaining portion
32 of the license fee that exceeds the department's actual cost to
33 investigate the license.

34 NEW SECTION. **Sec. 19.** A new section is added to chapter 31.04 RCW
35 to read as follows:

36 (1) A mortgage loan originator license issued under this section
37 expires annually. The director shall establish rules regarding the

1 mortgage loan originator license renewal process created under this
2 chapter. At a minimum a mortgage loan originator may not renew a
3 license under this chapter unless the mortgage loan originator
4 continues to meet the minimum standards for a license, and has
5 satisfied the annual continuing education requirements.

6 (2) A mortgage loan originator licensee may surrender a license by
7 delivering to the director through the nationwide mortgage licensing
8 system and registry written notice of surrender, but the surrender does
9 not affect the mortgage loan originator licensee's civil or criminal
10 liability or any administrative actions arising from acts or omissions
11 occurring before such a surrender.

12 NEW SECTION. **Sec. 20.** A new section is added to chapter 31.04 RCW
13 to read as follows:

14 For the purposes of implementing an orderly and efficient mortgage
15 loan originator licensing process, the director may establish licensing
16 rules and interim procedures for licensing and acceptance of
17 applications. For previously registered or licensed individuals the
18 director may establish expedited review and licensing procedures.

19 NEW SECTION. **Sec. 21.** A new section is added to chapter 31.04 RCW
20 to read as follows:

21 To prevent undue delay in the issuance of a mortgage loan
22 originator license and to facilitate the business of a mortgage loan
23 originator, an interim license with a fixed date of expiration may be
24 issued when the director determines that the mortgage loan originator
25 has substantially fulfilled the requirements for mortgage loan
26 originator licensing. The director may adopt rules describing the
27 information required before an interim license can be granted.

28 NEW SECTION. **Sec. 22.** A new section is added to chapter 31.04 RCW
29 to read as follows:

30 (1) Each mortgage loan originator applicant shall complete at least
31 twenty hours of prelicensing education approved by the nationwide
32 mortgage licensing system and registry. The prelicensing education
33 shall include at least three hours of federal law and regulations;
34 three hours of ethics, which shall include instruction on fraud,
35 consumer protection, and fair lending issues; two hours of training

1 related to lending standards for the nontraditional mortgage product
2 marketplace; and at least two hours of training specifically related to
3 Washington law.

4 (2) A mortgage loan originator applicant having successfully
5 completed the prelicensing education requirements approved by the
6 nationwide mortgage licensing system and registry for any state shall
7 be accepted as credit towards completion of prelicensing education
8 requirements in this state.

9 (3) This chapter does not preclude any prelicensing education
10 course, as approved by the nationwide mortgage licensing system and
11 registry, that is provided by the employer of the mortgage loan
12 originator applicant or an entity which is affiliated with the
13 applicant by an agency contract, or any subsidiary or affiliate of such
14 an employer or entity. Prelicensing education may be offered either in
15 a classroom, online, or by any other means approved by the nationwide
16 mortgage licensing system and registry.

17 NEW SECTION. **Sec. 23.** A new section is added to chapter 31.04 RCW
18 to read as follows:

19 (1) To obtain a mortgage loan originator license, an individual
20 must pass a test developed by the nationwide mortgage licensing system
21 and registry and administered by a test provider approved by the
22 nationwide mortgage licensing system and registry based upon reasonable
23 standards.

24 (2) An individual is not considered to have passed a test unless
25 the individual achieves a test score of not less than seventy-five
26 percent correct answers to questions.

27 (a) An individual may retake a test three consecutive times with
28 each consecutive taking occurring at least thirty days after the
29 preceding test.

30 (b) After failing three consecutive tests, an individual must wait
31 at least six months before taking the test again.

32 (c) A licensed mortgage loan originator who fails to maintain a
33 valid license for a period of five years or longer must retake the
34 test, not taking into account any time during which that individual is
35 a registered mortgage loan originator.

36 (3) This section does not prohibit a test provider approved by the
37 nationwide mortgage licensing system and registry from providing a test

1 at the location of the employer of the mortgage loan originator
2 applicant or any subsidiary or affiliate of the employer of the
3 applicant, or any entity with which the applicant holds an exclusive
4 arrangement to conduct the business of a mortgage loan originator.

5 NEW SECTION. **Sec. 24.** A new section is added to chapter 31.04 RCW
6 to read as follows:

7 (1) A licensed mortgage loan originator must complete a minimum of
8 eight hours of continuing education approved by the nationwide mortgage
9 licensing system and registry which must include at least three hours
10 of federal law and regulations; two hours of ethics, which must include
11 instruction on fraud, consumer protection, and fair lending issues; and
12 two hours of training related to lending standards for the
13 nontraditional mortgage product marketplace. Additionally, the
14 director may require at least one hour of continuing education on
15 Washington law provided by and administered through an approved
16 provider.

17 (2) The nationwide mortgage licensing system and registry must
18 review and approve continuing education courses. Review and approval
19 of a continuing education course must include review and approval of
20 the course provider.

21 (3) A licensed mortgage loan originator may only receive credit for
22 a continuing education course in the year in which the course is taken,
23 and may not take the same approved course in the same or successive
24 years to meet the annual requirements for continuing education.

25 (4) A licensed mortgage loan originator who is an instructor of an
26 approved continuing education course may receive credit for the
27 licensed mortgage loan originator's own annual continuing education
28 requirement at the rate of two hours credit for every one hour taught.

29 (5) A person having successfully completed the education
30 requirements approved by the nationwide mortgage licensing system and
31 registry for any state must have their credits accepted as credit
32 towards completion of continuing education requirements in this state.

33 (6) This section does not preclude any education course, as
34 approved by the nationwide mortgage licensing system and registry, that
35 is provided by the employer of the mortgage loan originator or an
36 entity which is affiliated with the mortgage loan originator by an
37 agency contract, or any subsidiary or affiliate of such employer or

1 entity. Continuing education may be offered either in a classroom,
2 online, or by any other means approved by the nationwide mortgage
3 licensing system and registry.

4 NEW SECTION. **Sec. 25.** A new section is added to chapter 31.04 RCW
5 to read as follows:

6 The director shall establish a process whereby mortgage loan
7 originators may challenge information entered into the nationwide
8 mortgage licensing system and registry by the director.

9 NEW SECTION. **Sec. 26.** A new section is added to chapter 31.04 RCW
10 to read as follows:

11 (1) Except as otherwise provided in section 1512 of the S.A.F.E.
12 act, the requirements under any federal law or chapter 42.56 RCW
13 regarding the privacy or confidentiality of any information or material
14 provided to the nationwide mortgage licensing system and registry, and
15 any privilege arising under federal or state law, including the rules
16 of any federal or state court, with respect to that information or
17 material, continues to apply to the information or material after the
18 information or material has been disclosed to the nationwide mortgage
19 licensing system and registry. Information and material may be shared
20 with all state and federal regulatory officials with mortgage industry
21 oversight authority without the loss of privilege or the loss of
22 confidentiality protections provided by federal law or state law.

23 (2) For the purposes under subsection (1) of this section, the
24 director is authorized to enter agreements or sharing arrangements with
25 other governmental agencies, the conference of state bank supervisors,
26 the American association of residential mortgage regulators, or other
27 associations representing governmental agencies as established by rule,
28 regulation, or order of the director.

29 (3) Information or material that is subject to a privilege or
30 confidentiality under subsection (1) of this section is not subject to:

31 (a) Disclosure under any federal or state law governing the
32 disclosure to the public of information held by an officer or an agency
33 of the federal government or the respective state; or

34 (b) Subpoena or discovery, or admission into evidence, in any
35 private civil action or administrative process unless, with respect to
36 any privilege held by the nationwide mortgage licensing system and

1 registry with respect to that information or material, the person to
2 whom the information or material pertains waives, in whole or in part,
3 in the discretion of that person, that privilege.

4 (4) Chapter 42.56 RCW relating to the disclosure of confidential
5 supervisory information or any information or material described in
6 subsection (1) of this section that is inconsistent with subsection (1)
7 of this section is superseded by the requirements of this section.

8 (5) This section does not apply to the information or material
9 relating to the employment history of, and publicly adjudicated
10 disciplinary and enforcement actions against, mortgage loan originators
11 that is included in the nationwide mortgage licensing system and
12 registry for access by the public.

13 NEW SECTION. **Sec. 27.** A new section is added to chapter 31.04 RCW
14 to read as follows:

15 Each consumer loan company licensee who makes or brokers a loan
16 secured by real property shall submit to the nationwide mortgage
17 licensing system and registry reports of condition, which must be in
18 the form and must contain the information as the nationwide mortgage
19 licensing system and registry may require.

20 NEW SECTION. **Sec. 28.** A new section is added to chapter 31.04 RCW
21 to read as follows:

22 The director is authorized to regularly report violations of this
23 act, as well as enforcement actions and other relevant information, to
24 the nationwide mortgage licensing system and registry.

25 NEW SECTION. **Sec. 29.** A new section is added to chapter 31.04 RCW
26 to read as follows:

27 The unique identifier of any mortgage loan originator must be
28 clearly shown on all residential mortgage loan application forms,
29 solicitations, or advertisements, including business cards or web
30 sites, and any other documents as established by rule, regulation, or
31 order of the director. This section does not apply to consumer loan
32 company licensees.

33 **Sec. 30.** RCW 31.04.165 and 2001 c 81 s 13 are each amended to read
34 as follows:

1 (1) The director has the power, and broad administrative
2 discretion, to administer and interpret this chapter to facilitate the
3 delivery of financial services to the citizens of this state by
4 consumer loan companies and mortgage loan originators subject to this
5 chapter. The director shall adopt all rules necessary to administer
6 this chapter and to ensure complete and full disclosure by licensees of
7 lending transactions governed by this chapter.

8 (2) If it appears to the director that a licensee is conducting
9 business in an injurious manner or is violating any provision of this
10 chapter, the director may order or direct the discontinuance of any
11 such injurious or illegal practice.

12 (3) For purposes of this section, "conducting business in an
13 injurious manner" means conducting business in a manner that violates
14 any provision of this chapter, or that creates the reasonable
15 likelihood of a violation of any provision of this chapter.

16 (4) The director or designated persons, with or without prior
17 administrative action, may bring an action in superior court to enjoin
18 the acts or practices that constitute violations of this chapter and to
19 enforce compliance with this chapter or any rule or order made under
20 this chapter. Upon proper showing, injunctive relief or a temporary
21 restraining order shall be granted. The director shall not be required
22 to post a bond in any court proceedings.

23 NEW SECTION. **Sec. 31.** In order to facilitate an orderly
24 transition to licensing and minimize disruption in the mortgage
25 marketplace, sections 10 through 14, 16 through 19, 21 through 25, and
26 27 through 29 of this act take effect July 1, 2010.

27 NEW SECTION. **Sec. 32.** In order to facilitate an orderly
28 transition to licensing and minimize disruption in the mortgage
29 marketplace, section 5 of this act takes effect January 1, 2010.

30 NEW SECTION. **Sec. 33.** The director of financial institutions or
31 the director's designee may take the actions necessary to ensure this
32 act is implemented on its effective dates.

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