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**SUBSTITUTE HOUSE BILL 1923**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** House Business & Financial Services (originally sponsored by Representatives Zeiger, Bergquist, Kirby, Haler, Hargrove, and Parker)

READ FIRST TIME 02/20/15.

1 AN ACT Relating to income share agreements; amending RCW  
2 19.52.080 and 21.20.320; reenacting and amending RCW 31.04.025;  
3 adding a new chapter to Title 31 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that student loan  
6 debt exceeds one trillion dollars and is increasing. For the most  
7 recent cohort of students who began repaying loans in the year 2011,  
8 approximately one out of seven of those student loans are in default.  
9 Income share agreements are an alternative to loans and would allow  
10 an individual to receive funds to pay for higher education or  
11 workforce development in exchange for a certain percentage of his or  
12 her income over a fixed period of time. The payment obligations under  
13 income share agreements would be based upon the individual's income,  
14 and these agreements would provide a tool to address the increasing  
15 rate of student loan debt and the rate of defaults.

16 NEW SECTION. **Sec. 2.** The definitions in this section apply  
17 throughout this chapter unless the context clearly requires  
18 otherwise.

19 (1) "Applicant" means a person applying for a license under this  
20 chapter.

- 1 (2) "Department" means the department of financial institutions.
- 2 (3) "Director" means the director of financial institutions.
- 3 (4) "Financial institution" means commercial banks and alien  
4 banks subject to regulation under Title 30A RCW, savings banks  
5 subject to regulation under Title 32 RCW, savings associations  
6 subject to regulation under Title 33 RCW, and credit unions subject  
7 to regulation under chapter 31.12 RCW.
- 8 (5) "Income" means salary, wages, interest, dividends, and other  
9 earnings which are reportable for federal income tax purposes.
- 10 (6) "Income share agreement" means an agreement between an  
11 individual and any other person under which the individual commits to  
12 pay a specified percentage of the individual's future income, for a  
13 specified period of time, in exchange for payments to or on behalf of  
14 the individual for postsecondary education, workforce development, or  
15 similar purposes.
- 16 (7) "Income share agreement originator" means a person who for  
17 compensation or gain takes an income share agreement application or  
18 offers or negotiates the terms of an income share agreement or a  
19 person who purchases an existing income share agreement. An income  
20 share agreement originator does not include any individual who  
21 performs purely administrative or clerical tasks.
- 22 (8) "Individual" means any person who consults with or retains a  
23 licensee or person subject to this chapter in an effort to obtain, or  
24 who seeks information about entering into, an income share agreement  
25 regardless of whether that person actually enters into an agreement.
- 26 (9) "License" means a single license issued under the authority  
27 of this chapter with respect to a single place of business.
- 28 (10) "Licensee" means a person to whom one or more licenses have  
29 been issued. "Licensee" also means any person, whether located within  
30 or outside of this state, who fails to obtain a license required by  
31 this chapter.
- 32 (11) "Person" includes individuals, partnerships, associations,  
33 limited liability companies, limited liability partnerships, trusts,  
34 corporations, and all other legal entities.
- 35 (12) "Principal" means any person who controls, directly or  
36 indirectly through one or more intermediaries, alone or in concert  
37 with others, a ten percent or greater interest in a partnership;  
38 company; association; corporation; or a limited liability company,  
39 and the owner of a sole proprietorship.

1        NEW SECTION.    **Sec. 3.**    An income share agreement must:

2            (1) Specify the percentage of future income which the individual  
3 is obligated to pay to the person with whom the individual has  
4 entered into an income share agreement;

5            (2) Specify the maximum duration of the individual's obligation  
6 under the income share agreement, which may not exceed three hundred  
7 sixty months, unless the duration has been extended pursuant to  
8 section 5 of this act;

9            (3) Specify that at least the first ten thousand dollars of an  
10 individual's income is exempt when determining the individual's  
11 income for a given year; the amount of the exemption must be adjusted  
12 annually to reflect changes in the consumer price index for all urban  
13 consumers published by the bureau of labor statistics of the  
14 department of labor for the most recent twelve-month period for which  
15 such data are available, and notice must be provided annually to the  
16 individual regarding the updated income threshold for exemption;

17            (4) Specify the terms and conditions by which the individual may  
18 extinguish his or her obligations under the income share agreement  
19 before the end of the payment period specified in the agreement,  
20 based upon the remaining term of the payment period;

21            (5) Make the following disclosures regarding the income share  
22 agreement in clear and simple language:

23            (a) The definition of income to be used for the purposes of  
24 calculating the individual's obligation;

25            (b) The percentage of income the individual is committed to  
26 paying under the agreement and the number of payments required per  
27 year;

28            (c) The duration of the individual's obligations under the  
29 agreement, including any circumstances under which the duration of  
30 the contract may be extended;

31            (d) That the agreement is not a debt instrument;

32            (e) That the amount the individual is required to pay under the  
33 agreement may be more or less than the payments made to or on behalf  
34 of the individual;

35            (f) That the agreement represents the obligation by the  
36 individual to pay a specific percentage of his or her income and does  
37 not give the contract holder any rights regarding the individual's  
38 actions regarding educational or employment pursuits; and

1 (g) Whether the obligations of the individual under the agreement  
2 may be extinguished by accelerating payments and any terms under  
3 which payment may be accelerated.

4 NEW SECTION. **Sec. 4.** (1) No licensee may enter into an income  
5 share agreement if the total percentage of an individual's future  
6 income obligated under the agreement and any other income share  
7 agreement entered into by the individual exceeds fifteen percent of  
8 his or her future income.

9 (2) Any income share agreement entered into in violation of  
10 subsection (1) of this section is unenforceable against the  
11 individual.

12 NEW SECTION. **Sec. 5.** The duration of the individual's  
13 obligations under the income share agreement may be extended for a  
14 period of time equal to the time that the individual's annual income  
15 is less than the exempt amount established in section 3(3) of this  
16 act.

17 NEW SECTION. **Sec. 6.** (1) In the event of the sale of an income  
18 share agreement by the originator of the agreement, the buyer of the  
19 agreement is subject to the requirements of this chapter.

20 (2) The buyer of an income share agreement must be a licensee or  
21 have a servicer for the income share agreement who is a licensee.

22 NEW SECTION. **Sec. 7.** It is a violation of this chapter for a  
23 licensee, its officers, directors, employees, or independent  
24 contractors, or any other person subject to this chapter to:

25 (1) Directly or indirectly employ any scheme, device, or artifice  
26 to defraud or mislead any individual, to defraud or mislead any  
27 lender, or to defraud or mislead any person;

28 (2) Directly or indirectly engage in any unfair or deceptive  
29 practice toward any person;

30 (3) Directly or indirectly obtain property by fraud or  
31 misrepresentation;

32 (4) Fail to make disclosures to loan applicants as required by  
33 RCW 31.04.102 and any other applicable state or federal law;

34 (5) Make, in any manner, any false or deceptive statement or  
35 representation with regard to the financing terms or conditions for  
36 an income share agreement or engage in bait and switch advertising;

1 (6) Negligently make any false statement or knowingly and  
2 willfully make any omission of material fact in connection with any  
3 reports filed with the department by a licensee or in connection with  
4 any investigation conducted by the department;

5 (7) Violate any applicable state or federal law relating to the  
6 activities governed by this chapter;

7 (8) Make or originate income share agreements from any unlicensed  
8 location;

9 (9) Fail to comply with the terms of the income share agreement;  
10 or

11 (10) Fail to comply with advertising regulations set by rule.

12 NEW SECTION. **Sec. 8.** (1) No person may originate income share  
13 agreements without first obtaining and maintaining a license in  
14 accordance with this chapter.

15 (2) If a transaction violates subsection (1) of this section, any  
16 fees or interest charged in the making of an income share agreement  
17 must be refunded to the individual.

18 (3) Each licensed income share agreement originator must register  
19 with and maintain a valid unique identifier issued by the nationwide  
20 mortgage licensing system and registry.

21 NEW SECTION. **Sec. 9.** (1) Each application for a license under  
22 this chapter must be in writing in a form prescribed by the director.  
23 The application must contain at least the following information:

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

25 (b) If the applicant is a partnership, limited liability company,  
26 or association, the name of every member;

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

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

31 (e) Other information as the director may require by rule.

32 (2) As part of or in connection with an application for any  
33 license under this section, or periodically upon license renewal,  
34 each officer, director, and owner applicant must furnish information  
35 concerning his or her identity, including fingerprints for submission  
36 to the Washington state patrol, the federal bureau of investigation,  
37 or any governmental agency or entity authorized to receive this  
38 information for a state and national criminal history background

1 check, personal history, experience, business record, purposes, and  
2 other pertinent facts, as the director may reasonably require. As  
3 part of or in connection with an application for a license under this  
4 chapter, or periodically upon license renewal, the director is  
5 authorized to receive criminal history record information that  
6 includes nonconviction data as defined in RCW 10.97.030. The  
7 department may only disseminate nonconviction data obtained under  
8 this section to criminal justice agencies. This section does not  
9 apply to financial institutions regulated under chapters 31.12 and  
10 31.13 RCW and Titles 30A, 32, and 33 RCW.

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

17 (4) Each applicant must file and maintain a surety bond, approved  
18 by the director, executed by the applicant as obligor and by a surety  
19 company authorized to do a surety business in this state as surety,  
20 whose liability as such surety must not exceed in the aggregate the  
21 penal sum of the bond. The penal sum of the bond must be a minimum of  
22 thirty thousand dollars and based on the annual dollar amount of  
23 income share agreements originated. The bond must run to the state of  
24 Washington as obligee for the use and benefit of the state and of any  
25 person or persons who may have a cause of action against the obligor  
26 under this chapter. The bond must be conditioned that the obligor as  
27 licensee will faithfully conform to and abide by this chapter and all  
28 the rules adopted under this chapter. The bond must pay to the state  
29 and any person or persons having a cause of action against the  
30 obligor all moneys that may become due and owing to the state and  
31 those persons under and by virtue of this chapter. The bond must be  
32 continuous and may be canceled by the surety upon the surety giving  
33 written notice to the director of its intent to cancel the bond. The  
34 cancellation is effective forty-five days after the notice is  
35 received by the director.

36 NEW SECTION. **Sec. 10.** (1) The director must issue a license to  
37 the applicant to originate income share agreements in accordance with  
38 this chapter at the location specified in the application if, after  
39 investigation, the director finds that:

1 (a) The applicant has paid all required fees;

2 (b) The applicant has submitted a complete application in  
3 compliance with section 9 of this act;

4 (c) Neither the applicant nor its officers or principals have had  
5 a license issued under this section, in this state or another state,  
6 revoked or suspended within the last five years of the date of filing  
7 of the application;

8 (d) Neither the applicant nor any of its officers or principals  
9 have been convicted of a gross misdemeanor involving dishonesty or  
10 financial misconduct or a felony or a violation of the banking laws  
11 of this state or of the United States within seven years of the  
12 filing of an application; and

13 (e) The financial responsibility, experience, character, and  
14 general fitness of the applicant are such as to command the  
15 confidence of the community and to warrant a belief that the business  
16 will be operated honestly, fairly, and efficiently within the  
17 purposes of this chapter.

18 (2) If the director does not find the conditions of subsection  
19 (1) of this section have been met, the director may not issue the  
20 license. The director must notify the applicant of the denial and  
21 return to the applicant the bond posted and the sum paid by the  
22 applicant as a license fee, retaining the investigation fee to cover  
23 the costs of investigating the application. The director must approve  
24 or deny every application for license under this chapter within  
25 ninety days from the filing of a complete application with the fees  
26 and the approved bond.

27 NEW SECTION. **Sec. 11.** The licensee may not maintain more than  
28 one place of business under the same license, but the director may  
29 issue more than one license to the same licensee upon application by  
30 the licensee in a form and manner established by the director.

31 Whenever a licensee wishes to change the place of business to a  
32 street address other than that reported in the nationwide mortgage  
33 licensing system and registry, the licensee must give prior written  
34 notice to the director, pay the fee, and obtain the director's  
35 approval. The license is not transferable or assignable.

36 NEW SECTION. **Sec. 12.** A licensee must, for each license held by  
37 any person, on or before the first day of each March, pay to the  
38 director an annual assessment as determined by rule by the director.

1 The licensee must be responsible for payment of the annual assessment  
2 for the previous calendar year if the licensee had a license for any  
3 time during the preceding calendar year, regardless of whether they  
4 surrendered their license during the calendar year or whether their  
5 license was suspended or revoked. At the same time the licensee must  
6 file with the director the required bond or otherwise demonstrate  
7 compliance with section 8 of this act.

8 NEW SECTION. **Sec. 13.** (1) The director must enforce all laws  
9 and rules relating to the licensing and regulation of licensees and  
10 persons subject to this chapter.

11 (2) The director may deny applications for licenses for:

12 (a) Failure of the applicant to demonstrate within its  
13 application for a license that it meets the requirements for  
14 licensing in sections 8 and 9 of this act;

15 (b) Violation of an order issued by the director under this  
16 chapter or another chapter administered by the director, including  
17 but not limited to cease and desist orders and temporary cease and  
18 desist orders;

19 (c) Revocation or suspension of a license to originate income  
20 share agreements by this state, another state, or by the federal  
21 government within five years of the date of submittal of a complete  
22 application for a license; or

23 (d) Filing an incomplete application when that incomplete  
24 application has been filed with the department for sixty or more  
25 days, provided that the director has given notice to the licensee  
26 that the application is incomplete, informed the applicant why the  
27 application is incomplete, and allowed at least twenty days for the  
28 applicant to complete the application.

29 (3) The director may condition, suspend, or revoke a license  
30 issued under this chapter if the director finds that:

31 (a) The licensee has failed to pay any fee due the state of  
32 Washington, has failed to maintain in effect the bond or permitted  
33 substitute required under this chapter, or has failed to comply with  
34 any specific order or demand of the director lawfully made and  
35 directed to the licensee in accordance with this chapter;

36 (b) The licensee, either knowingly or without the exercise of due  
37 care, has violated any provision of this chapter or any rule adopted  
38 under this chapter;



1 (c) A fact or condition exists that, if it had existed at the  
2 time of the original application for the license, clearly would have  
3 allowed the director to deny the application for the original  
4 license; or

5 (d) The licensee failed to comply with any directive, order, or  
6 subpoena issued by the director under this chapter.

7 The director may condition, revoke, or suspend only the particular  
8 license with respect to which grounds for conditioning, revocation,  
9 or suspension may occur or exist or the director may condition,  
10 revoke, or suspend all of the licenses issued to the licensee.

11 (4) The director may impose fines of up to one hundred dollars  
12 per day, per violation, upon the licensee, its employee or income  
13 share agreement originator, or other person subject to this chapter  
14 for:

15 (a) Any violation of this chapter; or

16 (b) Failure to comply with any directive, order, or subpoena  
17 issued by the director under this chapter.

18 (5) The director may issue an order directing the licensee, its  
19 employee, or other person subject to this chapter to:

20 (a) Cease and desist from conducting business in a manner that is  
21 injurious to the public or violates any provision of this chapter;

22 (b) Take such affirmative action as is necessary to comply with  
23 this chapter;

24 (c) Make a refund or restitution to an individual or other person  
25 who is damaged as a result of a violation of this chapter; or

26 (d) Refund all fees received through any violation of this  
27 chapter.

28 (6) The director may issue an order removing from office or  
29 prohibiting from participation in the affairs of any licensee, or  
30 both, any officer, principal, employee, or any person subject to this  
31 chapter for:

32 (a) False statements or omission of material information from an  
33 application for a license that, if known, would have allowed the  
34 director to deny the original application for a license;

35 (b) Conviction of a gross misdemeanor involving dishonesty or  
36 financial misconduct or a felony;

37 (c) Suspension or revocation of a license to engage in the  
38 origination of income share agreements in this state or another  
39 state;

1 (d) Failure to comply with any order or subpoena issued under  
2 this chapter;

3 (e) A violation of this section or section 6 or 16 of this act;  
4 or

5 (f) Failure to obtain a license for activity that requires a  
6 license.

7 (7) Except to the extent prohibited by another statute, the  
8 director may engage in informal settlement of complaints or  
9 enforcement actions including, but not limited to, payment to the  
10 department for purposes of financial literacy and education programs  
11 authorized under RCW 43.320.150. If any person subject to this  
12 chapter makes a payment to the department under this section, the  
13 person may not advertise the payment.

14 (8) Whenever the director determines that the public is likely to  
15 be substantially injured by delay in issuing a cease and desist  
16 order, the director may immediately issue a temporary cease and  
17 desist order. The order may direct the licensee to discontinue any  
18 violation of this chapter, to take such affirmative action as is  
19 necessary to comply with this chapter, and may include a summary  
20 suspension of the licensee's license and may order the licensee to  
21 immediately cease the conduct of business under this chapter. The  
22 order shall become effective at the time specified in the order.  
23 Every temporary cease and desist order shall include a provision that  
24 a hearing will be held upon request to determine whether the order  
25 will become permanent. The hearing must be held within fourteen days  
26 of receipt of a request for a hearing unless otherwise specified in  
27 chapter 34.05 RCW.

28 (9) A licensee may surrender a license by delivering to the  
29 director written notice of surrender, but the surrender does not  
30 affect the licensee's civil or criminal liability, if any, for acts  
31 committed before the surrender, including any administrative action  
32 initiated by the director to suspend or revoke a license, impose  
33 fines, compel the payment of restitution to individuals or other  
34 persons, or exercise any other authority under this chapter. The  
35 statute of limitations on actions not subject to RCW 4.16.160 that  
36 are brought under this chapter by the director is five years.

37 (10) The revocation, suspension, or surrender of a license does  
38 not impair or affect the obligation of a preexisting lawful contract  
39 between the licensee and an individual.

1 (11) Every license issued under this chapter remains in force and  
2 effect until it has been surrendered, revoked, or suspended in  
3 accordance with this chapter. However, the director may on his or her  
4 own initiative reinstate suspended licenses or issue new licenses to  
5 a licensee whose license or licenses have been revoked if the  
6 director finds that the licensee meets all the requirements of this  
7 chapter.

8 (12) A license issued under this chapter expires upon the  
9 licensee's failure to comply with the annual assessment requirements  
10 in section 12 of this act and the rules. The department must provide  
11 notice of the expiration to the address of record provided by the  
12 licensee. On the fifteenth day after the department provides notice,  
13 if the assessment remains unpaid, the license expires. The licensee  
14 must receive notice prior to expiration and have the opportunity to  
15 stop the expiration as set forth in rule.

16 NEW SECTION. **Sec. 14.** No licensee may advertise, print,  
17 display, publish, distribute, or broadcast or cause or permit to be  
18 advertised, printed, displayed, published, distributed, or broadcast,  
19 in any manner whatsoever, any statement or representation with regard  
20 to the terms or conditions for income share agreements that is false,  
21 misleading, or deceptive.

22 NEW SECTION. **Sec. 15.** (1) The director or authorized assistants  
23 may apply for and obtain a superior court order approving and  
24 authorizing a subpoena in advance of its issuance. The application  
25 may be made in the county where the subpoenaed person resides or is  
26 found, or the county where the subpoenaed documents, records, or  
27 evidence are located, or in Thurston county. The application must:

28 (a) State that an order is sought under this section;

29 (b) Adequately specify the documents, records, evidence, or  
30 testimony; and

31 (c) Include a declaration made under oath that an investigation  
32 is being conducted for a lawfully authorized purpose related to an  
33 investigation within the department's authority and that the  
34 subpoenaed documents, records, evidence, or testimony are reasonably  
35 related to an investigation within the department's authority.

36 (2) When an application under this section is made to the  
37 satisfaction of the court, the court must issue an order approving  
38 the subpoena. An order under this subsection constitutes authority of

1 law for the agency to subpoena the documents, records, evidence, or  
2 testimony.

3 (3) The director or authorized assistants may seek approval and a  
4 court may issue an order under this section without prior notice to  
5 any person, including the person to whom the subpoena is directed and  
6 the person who is the subject of an investigation. An application for  
7 court approval is subject to the fee and process set forth in RCW  
8 36.18.012(3).

9 NEW SECTION. **Sec. 16.** (1) For the purpose of discovering  
10 violations of this chapter or securing information lawfully required  
11 under this chapter, the director may at any time, either personally  
12 or by designees, investigate or examine the loans and business and,  
13 wherever located, the books, accounts, records, papers, documents,  
14 files, and other information used in the business of every licensee  
15 and of every person who is engaged in the business of making or  
16 assisting in the making of income share agreements authorized by this  
17 chapter, whether the person acts or claims to act as principal or  
18 agent, or under or without the authority of this chapter. The  
19 director or designated representative:

20 (a) Must have free access to the employees, offices, places of  
21 business, books, accounts, papers, documents, other information,  
22 records, files, safes, and vaults of all such persons during normal  
23 business hours;

24 (b) May require the attendance of and examine under oath all  
25 persons whose testimony may be required about the income share  
26 agreements or the business or the subject matter of any  
27 investigation, examination, or hearing and may require such person to  
28 produce books, accounts, papers, records, files, and any other  
29 information the director or designated persons deem relevant to the  
30 inquiry;

31 (c) May require by directive, subpoena, or any other lawful means  
32 the production of original books, accounts, papers, records, files,  
33 and other information; may require that such original books,  
34 accounts, papers, records, files, and other information be copied; or  
35 may make copies of such original books, accounts, papers, records,  
36 files, or other information;

37 (d) May issue a subpoena or subpoena duces tecum requiring  
38 attendance by any person identified in this section or compelling

1 production of any books, accounts, papers, records, files, or other  
2 documents or information identified in this section.

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

6 (3) Every licensee examined or investigated by the director or  
7 the director's designee must pay to the director the cost of the  
8 examination or investigation of each licensed place of business as  
9 determined by rule by the director.

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

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

15 (b) Enter into agreements or relationships with other government  
16 officials or regulatory associations in order to improve efficiencies  
17 and reduce regulatory burden by sharing resources, standardized or  
18 uniform methods or procedures, and documents, records, information,  
19 or evidence obtained under this section;

20 (c) Use, hire, contract, or employ public or privately available  
21 analytical systems, methods, or software to examine or investigate  
22 the licensee, individual, or person subject to chapter 120, Laws of  
23 2009;

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

26 (e) Accept audit reports made by an independent certified public  
27 accountant for the licensee in the course of that part of the  
28 examination covering the same general subject matter as the audit and  
29 may incorporate the audit report in the report of the examination,  
30 report of investigation, or other writing of the director; or

31 (f) Assess the licensee the cost of the services in (a) of this  
32 subsection.

33 NEW SECTION. **Sec. 17.** (1)(a) The licensee must keep and use in  
34 the business such books, accounts, records, papers, documents, files,  
35 and other information as will enable the director to determine  
36 whether the licensee is complying with this chapter and with the  
37 rules adopted by the director under this chapter.

1 (b) The director must have free access to such books, accounts,  
2 records, papers, documents, files, and other information wherever  
3 located.

4 (c) Every licensee must preserve the books, accounts, records,  
5 papers, documents, files, and other information relevant to an income  
6 share agreement for at least three years after the last payment is  
7 made pursuant to such agreement.

8 (d) No licensee or person subject to examination or investigation  
9 under this chapter may withhold, abstract, remove, mutilate, destroy,  
10 or secrete any books, accounts, records, papers, documents, files, or  
11 other information.

12 (2) Each licensee must, on or before the first day of March of  
13 each year, file a report with the director giving such relevant  
14 information as the director may reasonably require concerning the  
15 business and operations of each licensed place of business conducted  
16 during the preceding calendar year. The report must be made under  
17 oath and must be in the form prescribed by the director, who must  
18 make and publish annually an analysis and recapitulation of the  
19 reports. Every licensee that fails to file a report that is required  
20 to be filed by this chapter within the time required under this  
21 chapter is subject to a penalty of fifty dollars per day for each  
22 day's delay. The attorney general may bring a civil action in the  
23 name of the state for recovery of any such penalty.

24 NEW SECTION. **Sec. 18.** (1) The director has the power, and broad  
25 administrative discretion, to administer and interpret this chapter  
26 to facilitate the delivery of financial services to the citizens of  
27 this state by income share agreement originators subject to this  
28 chapter. The director must adopt all rules necessary to administer  
29 this chapter and to ensure complete and full disclosure by licensees  
30 of lending transactions governed by this chapter.

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

35 (3) For purposes of this section, "conducting business in an  
36 injurious manner" means conducting business in a manner that violates  
37 any provision of this chapter, or that creates the reasonable  
38 likelihood of a violation of any provision of this chapter.

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

8 NEW SECTION. **Sec. 19.** (1) A person who violates, or knowingly  
9 aids or abets in the violation of any provision of this chapter, for  
10 which no penalty has been prescribed, and a person who fails to  
11 perform any act that it is his or her duty to perform under this  
12 chapter and for which failure no penalty has been prescribed, is  
13 guilty of a gross misdemeanor.

14 (2) No provision imposing civil penalties or criminal liability  
15 under this chapter or rule adopted under this chapter applies to an  
16 act taken or omission made in good faith in conformity with a written  
17 notice, interpretation, or examination report of the director or his  
18 or her agent.

19 NEW SECTION. **Sec. 20.** The proceedings for denying license  
20 applications, issuing cease and desist orders, suspending or revoking  
21 licenses, and imposing civil penalties or other remedies under this  
22 chapter, and any review or appeal of such action, is governed by the  
23 administrative procedure act, chapter 34.05 RCW.

24 NEW SECTION. **Sec. 21.** (1) The director or designated persons  
25 may, at his or her discretion, take any action as provided for in  
26 this chapter to enforce this chapter. If the person subject to this  
27 action does not appear in person or by counsel at the time and place  
28 designated for any administrative hearing that may be held on the  
29 action, then the person is deemed to consent to the action. If the  
30 person subject to the action consents, or if after hearing the  
31 director finds by a preponderance of the evidence that any grounds  
32 for sanctions under this chapter exist, then the director may impose  
33 any sanction authorized by this chapter.

34 (2) The director may recover the state's costs and expenses for  
35 prosecuting violations of this chapter including staff time spent  
36 preparing for and attending administrative hearings and reasonable

1 attorneys' fees unless, after a hearing, the director determines no  
2 violation occurred.

3 NEW SECTION. **Sec. 22.** Any income share agreement originated by  
4 an unlicensed person as prohibited under this chapter is  
5 unenforceable in Washington.

6 NEW SECTION. **Sec. 23.** The legislature finds that the practices  
7 governed by this chapter are matters vitally affecting the public  
8 interest for the purpose of applying the consumer protection act,  
9 chapter 19.86 RCW. Any violation of this chapter is not reasonable in  
10 relation to the development and preservation of business and is an  
11 unfair and deceptive act or practice and unfair method of competition  
12 in the conduct of trade or commerce in violation of RCW 19.86.020.  
13 Remedies provided by chapter 19.86 RCW are cumulative and not  
14 exclusive.

15 **Sec. 24.** RCW 31.04.025 and 2013 c 64 s 2 and 2013 c 29 s 2 are  
16 each reenacted and amended to read as follows:

17 (1) Each loan made to a resident of this state by a licensee, or  
18 persons subject to this chapter, is subject to the authority and  
19 restrictions of this chapter.

20 (2) This chapter does not apply to the following:

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

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

26 (c) Entities conducting transactions under chapter 63.14 RCW  
27 (retail installment sales of goods and services), unless credit is  
28 extended to purchase merchandise certificates, coupons, open or  
29 closed loop stored value, or other similar items issued and  
30 redeemable by a retail seller other than the retail seller extending  
31 the credit;

32 (d) Entities making loans under chapter 31.45 RCW (check cashers  
33 and sellers);

34 (e) Any person making a loan primarily for business, commercial,  
35 or agricultural purposes unless the loan is secured by a lien on the  
36 borrower's primary residence;



1 (f) Any person making loans made to government or government  
2 agencies or instrumentalities or making loans to organizations as  
3 defined in the federal truth in lending act;

4 (g) Entities making loans under chapter 43.185 RCW (housing trust  
5 fund);

6 (h) Entities making loans under programs of the United States  
7 department of agriculture, department of housing and urban  
8 development, or other federal government program that provides  
9 funding or access to funding for single-family housing developments  
10 or grants to low-income individuals for the purchase or repair of  
11 single-family housing;

12 (i) Nonprofit housing organizations making loans, or loans made,  
13 under housing programs that are funded in whole or in part by federal  
14 or state programs if the primary purpose of the programs is to assist  
15 low-income borrowers with purchasing or repairing housing or the  
16 development of housing for low-income Washington state residents;

17 (j) Entities making loans which are not residential mortgage  
18 loans under a credit card plan;

19 (k) Individuals employed by a licensed residential loan servicing  
20 company, unless so required by federal law or regulation; (~~and~~)

21 (l) Entities licensed under chapter 18.44 RCW that process  
22 payments on seller-financed loans secured by liens on real or  
23 personal property; and

24 (m) Entities licensed under chapter 31.--- RCW (the new chapter  
25 created in section 27 of this act) that originate income share  
26 agreements.

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

33 (4) The burden of proving the application for an exemption or  
34 exception from a definition, or a preemption of a provision of this  
35 chapter, is upon the person claiming the exemption, exception, or  
36 preemption.

37 **Sec. 25.** RCW 19.52.080 and 1981 c 78 s 2 are each amended to  
38 read as follows:

1 Profit and nonprofit corporations, Massachusetts trusts,  
2 associations, trusts, general partnerships, joint ventures, limited  
3 partnerships, and governments and governmental subdivisions,  
4 agencies, or instrumentalities may not plead the defense of usury nor  
5 maintain any action thereon or therefor, and persons may not plead  
6 the defense of usury nor maintain any action thereon or therefor if  
7 the transaction was primarily for agricultural, commercial,  
8 investment, or business purposes(~~(: PROVIDED, HOWEVER, That)~~). Except  
9 for income share agreements, as defined in section 2 of this act,  
10 this section shall not apply to a consumer transaction of any amount.

11 Consumer transactions, as used in this section, shall mean  
12 transactions primarily for personal, family, or household purposes.

13 **Sec. 26.** RCW 21.20.320 and 2006 c 220 s 1 are each amended to  
14 read as follows:

15 The following transactions are exempt from RCW 21.20.040 through  
16 21.20.300 and 21.20.327 except as expressly provided:

17 (1) Any isolated transaction, or sales not involving a public  
18 offering, whether effected through a broker-dealer or not; or any  
19 transaction effected in accordance with any rule by the director  
20 establishing a nonpublic offering exemption pursuant to this  
21 subsection where registration is not necessary or appropriate in the  
22 public interest or for the protection of investors.

23 (2) Any nonissuer transaction by a registered salesperson of a  
24 registered broker-dealer, and any resale transaction by a sponsor of  
25 a unit investment trust registered under the Investment Company Act  
26 of 1940 pursuant to any rule adopted by the director.

27 (3) Any nonissuer transaction effected by or through a registered  
28 broker-dealer pursuant to an unsolicited order or offer to buy; but  
29 the director may by rule require that the customer acknowledge upon a  
30 specified form that the sale was unsolicited, and that a signed copy  
31 of each such form be preserved by the broker-dealer for a specified  
32 period.

33 (4) Any transaction between the issuer or other person on whose  
34 behalf the offering is made and an underwriter, or among  
35 underwriters.

36 (5) Any transaction in a bond or other evidence of indebtedness  
37 secured by a real or chattel mortgage or deed of trust, or by an  
38 agreement for the sale of real estate or chattels, if the entire  
39 mortgage, deed of trust, or agreement, together with all the bonds or

1 other evidences of indebtedness secured thereby, is offered and sold  
2 as a unit. A bond or other evidence of indebtedness is not offered  
3 and sold as a unit if the transaction involves:

4 (a) A partial interest in one or more bonds or other evidences of  
5 indebtedness secured by a real or chattel mortgage or deed of trust,  
6 or by an agreement for the sale of real estate or chattels; or

7 (b) One of multiple bonds or other evidences of indebtedness  
8 secured by one or more real or chattel mortgages or deeds of trust,  
9 or agreements for the sale of real estate or chattels, sold to more  
10 than one purchaser as part of a single plan of financing; or

11 (c) A security including an investment contract other than the  
12 bond or other evidence of indebtedness.

13 (6) Any transaction by an executor, administrator, sheriff,  
14 marshal, receiver, trustee in bankruptcy, guardian, or conservator.

15 (7) Any transaction executed by a bona fide pledgee without any  
16 purpose of evading this chapter.

17 (8) Any offer or sale to a bank, savings institution, trust  
18 company, insurance company, investment company as defined in the  
19 Investment Company Act of 1940, pension or profit-sharing trust, or  
20 other financial institution or institutional buyer, or to a broker-  
21 dealer, whether the purchaser is acting for itself or in some  
22 fiduciary capacity.

23 (9) Any transaction effected in accordance with the terms and  
24 conditions of any rule adopted by the director if:

25 (a) The aggregate offering amount does not exceed five million  
26 dollars; and

27 (b) The director finds that registration is not necessary in the  
28 public interest and for the protection of investors.

29 (10) Any offer or sale of a preorganization certificate or  
30 subscription if (a) no commission or other remuneration is paid or  
31 given directly or indirectly for soliciting any prospective  
32 subscriber, (b) the number of subscribers does not exceed ten, and  
33 (c) no payment is made by any subscriber.

34 (11) Any transaction pursuant to an offer to existing security  
35 holders of the issuer, including persons who at the time of the  
36 transaction are holders of convertible securities, nontransferable  
37 warrants, or transferable warrants exercisable within not more than  
38 ninety days of their issuance, if (a) no commission or other  
39 remuneration (other than a standby commission) is paid or given  
40 directly or indirectly for soliciting any security holder in this

1 state, or (b) the issuer first files a notice specifying the terms of  
2 the offer and the director does not by order disallow the exemption  
3 within the next five full business days.

4 (12) Any offer (but not a sale) of a security for which  
5 registration statements have been filed under both this chapter and  
6 the Securities Act of 1933 if no stop order or refusal order is in  
7 effect and no public proceeding or examination looking toward such an  
8 order is pending under either act.

9 (13) The issuance of any stock dividend, whether the corporation  
10 distributing the dividend is the issuer of the stock or not, if  
11 nothing of value is given by stockholders for the distribution other  
12 than the surrender of a right to a cash dividend where the  
13 stockholder can elect to take a dividend in cash or stock.

14 (14) Any transaction incident to a right of conversion or a  
15 statutory or judicially approved reclassification, recapitalization,  
16 reorganization, quasi reorganization, stock split, reverse stock  
17 split, merger, consolidation, or sale of assets.

18 (15) The offer or sale by a registered broker-dealer, or a person  
19 exempted from the registration requirements pursuant to RCW  
20 21.20.040, acting either as principal or agent, of securities  
21 previously sold and distributed to the public: PROVIDED, That:

22 (a) Such securities are sold at prices reasonably related to the  
23 current market price thereof at the time of sale, and, if such  
24 broker-dealer is acting as agent, the commission collected by such  
25 broker-dealer on account of the sale thereof is not in excess of  
26 usual and customary commissions collected with respect to securities  
27 and transactions having comparable characteristics;

28 (b) Such securities do not constitute the whole or a part of an  
29 unsold allotment to or subscription or participation by such broker-  
30 dealer as an underwriter of such securities or as a participant in  
31 the distribution of such securities by the issuer, by an underwriter  
32 or by a person or group of persons in substantial control of the  
33 issuer or of the outstanding securities of the class being  
34 distributed; and

35 (c) The security has been lawfully sold and distributed in this  
36 state or any other state of the United States under this or any act  
37 regulating the sale of such securities.

38 (16) Any transaction by a mutual or cooperative association  
39 meeting the requirements of (a) and (b) of this subsection:

40 (a) The transaction:

1 (i) Does not involve advertising or public solicitation; or  
2 (ii) Involves advertising or public solicitation, and:  
3 (A) The association first files a notice of claim of exemption on  
4 a form prescribed by the director specifying the terms of the offer  
5 and the director does not by order deny the exemption within the next  
6 ten full business days; or  
7 (B) The association is an employee cooperative and identifies  
8 itself as an employee cooperative in advertising or public  
9 solicitation.  
10 (b) The transaction involves an instrument or interest, that:  
11 (i)(A) Qualifies its holder to be a member or patron of the  
12 association;  
13 (B) Represents a contribution of capital to the association by a  
14 person who is or intends to become a member or patron of the  
15 association;  
16 (C) Represents a patronage dividend or other patronage  
17 allocation; or  
18 (D) Represents the terms or conditions by which a member or  
19 patron purchases, sells, or markets products, commodities, or  
20 services from, to, or through the association; and  
21 (ii) Is nontransferable except in the case of death, operation of  
22 law, bona fide transfer for security purposes only to the  
23 association, a bank, or other financial institution, intrafamily  
24 transfer, transfer to an existing member or person who will become a  
25 member, or transfer by gift to any person organized and operated as a  
26 nonprofit organization as defined in RCW 84.36.800(4) that also  
27 possesses a current tax exempt status under the laws of the United  
28 States, and, in the case of an instrument, so states conspicuously on  
29 its face.  
30 (17) Any income share agreement entered into pursuant to chapter  
31 31.--- RCW (the new chapter created in section 27 of this act).  
32 However, any solicitation, offer, or sale of interest in an income  
33 share agreement made pursuant to chapter 31.--- RCW (the new chapter  
34 created in section 27 of this act) is not exempt.  
35 (18) Any transaction effected in accordance with any rule adopted  
36 by the director establishing a limited offering exemption which  
37 furthers objectives of compatibility with federal exemptions and  
38 uniformity among the states, provided that in adopting any such rule  
39 the director may require that no commission or other remuneration be  
40 paid or given to any person, directly or indirectly, for effecting

1 sales unless the person is registered under this chapter as a broker-  
2 dealer or salesperson.

3 NEW SECTION. **Sec. 27.** Sections 1 through 23 of this act  
4 constitute a new chapter in Title 31 RCW.

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