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**SUBSTITUTE SENATE BILL 5968**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Senate Business, Financial Services, Gaming & Trade (originally sponsored by Senators Stanford, Dhingra, Frame, Hasegawa, Kuderer, Saldaña, Trudeau, Valdez, and C. Wilson)

AN ACT Relating to regulating home equity sharing agreements under the consumer loan act; and amending RCW 31.04.015, 31.04.027, 31.04.102, and 31.04.105.

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

**Sec.**  RCW 31.04.015 and 2018 c 62 s 9 are each amended to read as follows:

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

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

(2) "Affiliate" means any person who, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

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

(4) "Borrower" means any person who consults with or retains a licensee or person subject to this chapter in an effort to obtain, or who seeks information about obtaining a loan, regardless of whether that person actually obtains such a loan. "Borrower" includes a person who consults with or retains a licensee or person subject to this chapter in an effort to obtain, or who seeks information about obtaining a residential mortgage loan modification, regardless of whether that person actually obtains a residential mortgage loan modification.

(5) "Department" means the state department of financial institutions.

(6) "Depository institution" has the same meaning as in section 3 of the federal deposit insurance act on July 26, 2009, and includes credit unions.

(7) "Director" means the director of financial institutions.

(8) "Educational institution" means any entity that is a degree-granting institution as defined in RCW 28B.85.010, a private vocational school as defined in RCW 28C.10.020, or school as defined in RCW 18.16.020.

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

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

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

(12) "License" means a single license issued under the authority of this chapter.

(13) "Licensee" means a person to whom one or more licenses have been issued. "Licensee" also means any person, whether located within or outside of this state, who fails to obtain a license required by this chapter.

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

(15) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under this chapter.

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

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

(18)(a) "Mortgage loan originator" means an individual who for compensation or gain (i) takes a residential mortgage loan application, or (ii) offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" also includes individuals who hold themselves out to the public as able to perform any of these activities. "Mortgage loan originator" does not include any individual who performs purely administrative or clerical tasks; and does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code. For the purposes of this definition, administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing of a residential mortgage loan.

(b) "Mortgage loan originator" also includes an individual who for direct or indirect compensation or gain performs residential mortgage loan modification services or holds himself or herself out as being able to perform residential mortgage loan modification services.

(c) "Mortgage loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. For the purposes of chapter 120, Laws of 2009, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

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

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

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

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

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

(d) This subsection does not apply to employees of a housing counseling agency approved by the United States department of housing and urban development unless the employees of a housing counseling agency are required under federal law to be individually licensed as mortgage loan originators.

(19) "Nationwide mortgage licensing system" means a licensing system developed and maintained by the conference of state bank supervisors for licensing and registration.

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

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

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

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

(24) "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other consensual security interest on a dwelling, as defined in the truth in lending act, or residential real estate upon which is constructed or intended to be constructed a dwelling. "Residential mortgage loan" includes home equity sharing agreements.

(25) "Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include but are not limited to forbearances; repayment plans; changes in interest rates, loan terms, or loan types; capitalizations of arrearages; or principal reductions.

(26) "Residential mortgage loan modification services" includes negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a residential mortgage loan modification for compensation or gain. "Residential mortgage loan modification services" also includes the collection of data for submission to an entity performing mortgage loan modification services.

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

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

(29) "Service or servicing a loan" means on behalf of the lender or investor of a residential mortgage loan: (a) Collecting or receiving payments on existing obligations due and owing to the lender or investor, including payments of principal, interest, escrow amounts, and other amounts due; (b) collecting fees due to the servicer; (c) working with the borrower and the licensed lender or servicer to collect data and make decisions necessary to modify certain terms of those obligations either temporarily or permanently; (d) otherwise finalizing collection through the foreclosure process; or (e) servicing a reverse mortgage loan.

(30) "Service or servicing a reverse mortgage loan" means, pursuant to an agreement with the owner of a reverse mortgage loan: Calculating, collecting, or receiving payments of interest or other amounts due; administering advances to the borrower; and providing account statements to the borrower or lender.

(31) "Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balances of the principal of the loan outstanding for the time outstanding.

(a) On a nonresidential loan each payment is applied first to any unpaid penalties, fees, or charges, then to accumulated interest, and the remainder of the payment applied to the unpaid balance of the principal until paid in full. In using such method, interest must not be payable in advance nor compounded. The prohibition on compounding interest does not apply to reverse mortgage loans made in accordance with the Washington state reverse mortgage act. The director may adopt by rule a more detailed explanation of the meaning and use of this method.

(b) On a residential mortgage loan payments are applied as determined in the security instrument.

(32) "Student education loan" means any loan solely for personal use to finance postsecondary education and costs of attendance at an educational institution. A student education loan includes a loan made to refinance a student education loan. A student education loan does not include a payment plan or accounts receivable at a higher education institution as defined in RCW 28B.07.020(4) only during the time of a student's enrollment in the higher education institution, not to include a refinanced payment plan or accounts receivable, an extension of credit under an open-end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling.

(33) "Student education loan borrower" means: (a) Any resident of this state who has received or agreed to pay a student education loan; or (b) any person who shares responsibility with such resident for repaying the student education loan.

(34) "Student education loan servicer" means any person, wherever located, responsible for the servicing of any student education loan to any student education loan borrower.

(35) "Student education loan servicing" or "service a student education loan" means: (a) Receiving any scheduled periodic payments from a student education loan borrower pursuant to the terms of a student education loan; (b) applying the payments of principal and interest and such other payments with respect to the amounts received from a student education loan borrower, as may be required pursuant to the terms of a student education loan; (c) working with the student education loan borrower to collect data, or collecting data, to make decisions to modify the loan; or (d) performing other administrative services with respect to a student education loan including collection activities. "Student education loan servicing" does not include third-party student education loan modification services.

(36) "Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.

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

(38) "Third-party student education loan modification services" means for compensation or other consideration by or on behalf of the borrower working with the student education loan borrower or his or her representative to collect data or prepare or submit documents, or collecting data and preparing or submitting documents, to modify, refinance, or consolidate the loan, or change repayment plans.

(39) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system.

(40) "Home equity sharing agreement" means any obligation in which an advance sum of money or other thing of value is extended to a borrower in exchange for an interest or future share of equity in the borrower's primary dwelling or a future obligation to pay a sum upon the occurrence of an agreed-upon event.

**Sec.**  RCW 31.04.027 and 2021 c 15 s 1 are each amended to read as follows:

(1) It is a violation of this chapter for a licensee, its officers, directors, employees, or independent contractors, or any other person subject to this chapter to:

(a) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any borrower, to defraud or mislead any lender, or to defraud or mislead any person;

(b) Directly or indirectly engage in any unfair or deceptive practice toward any person;

(c) Directly or indirectly obtain property by fraud or misrepresentation;

(d) Solicit or enter into a contract with a borrower that provides in substance that the consumer loan company may earn a fee or commission through the consumer loan company's best efforts to obtain a loan even though no loan is actually obtained for the borrower;

(e) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

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

(g) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;

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

(i) Make any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(j) Accept from any borrower at or near the time a loan is made and in advance of any default an execution of, or induce any borrower to execute, any instrument of conveyance, not including a mortgage or deed of trust, to the lender of any ownership interest in the borrower's primary dwelling that is the security for the borrower's loan;

(k) Obtain at the time of closing a release of future damages for usury or other damages or penalties provided by law or a waiver of the provisions of this chapter;

(l) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by that rate of interest;

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

(n) Make or originate loans from any unlicensed location. It is not a violation for a licensed mortgage loan originator to originate loans from an unlicensed location if that location is the licensed mortgage loan originator's residence and the licensed mortgage loan originator and licensed sponsoring company comply with RCW 31.04.075.

(2) It is a violation of this chapter for a student education loan servicer to:

(a) Conduct licensable activity from any unlicensed location;

(b) Misrepresent or omit any material information in connection with the servicing of a student education loan including, but not limited to, misrepresenting the amount, nature, conditions, or terms of any fee or payment due or claimed to be due on a student education loan, the terms and conditions of the loan agreement, the availability of loan discharge or forgiveness options, the availability and terms of and process for enrolling in income-driven repayment, or the borrower's obligations under the loan;

(c) Provide inaccurate information to a credit bureau, thereby harming a student education loan borrower's creditworthiness, including failing to report both the favorable and unfavorable payment history of the student education loan;

(d) Fail to report to a consumer credit bureau at least annually if the student education loan servicer regularly reports information to a credit bureau;

(e) Refuse to communicate with an authorized representative of the student education loan borrower who provides a written authorization signed by the student education loan borrower. However, the student education loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student education loan borrower;

(f) Refuse to communicate with the student education loan borrower or an authorized representative of the student education loan borrower;

(g) Apply payments made by a borrower to the outstanding balance of a student education loan, or allocate a payment across a group of student education loans, in a manner that does not conform with the borrower's stated intent. However, this subsection (2)(g) does not require application of a student education loan in a manner contrary to the express terms of the promissory note;

(h) Fail to respond within fifteen calendar days to communications from the student loan advocate, or within such shorter, reasonable time as the student loan advocate may request in his or her communication; or

(i) Fail to provide a response within fifteen calendar days to a consumer complaint submitted to the servicer by the student loan advocate. If necessary, a licensee may request additional time up to a maximum of forty-five calendar days, provided that such request is accompanied by an explanation why such additional time is reasonable and necessary.

(3) It is a violation of this chapter for a person providing a home equity sharing agreement to:

(a) Discount the value of the borrower's primary dwelling by more than two percent when determining any term of the home equity sharing agreement;

(b) Charge any prepayment penalty;

(c) Prevent the property owner from renting or using the primary dwelling as the property owner chooses;

(d) Use an appraisal or valuation that is not performed by an independent third party; and

(e) Include provisions in the home equity sharing agreement that prevent the borrower from refinancing a mortgage or lien on the primary dwelling.

(4) The director's obligations or duties under chapter 62, Laws of 2018 are subject to section 21, chapter 62, Laws of 2018.

**Sec.**  RCW 31.04.102 and 2018 c 62 s 14 are each amended to read as follows:

(1) For all loans made by a licensee that are not secured by a lien on real property, the licensee must make disclosures in compliance with the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Part 1026, and all other applicable federal laws and regulations.

(2) For all loans made by a licensee that are secured by a lien on real property, the licensee must provide to each borrower within three business days following receipt of a loan application a written disclosure containing an itemized estimation and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a loan from the licensee. A good faith estimate of a fee or cost must be provided if the exact amount of the fee or cost is not available when the disclosure is provided. Disclosure in a form which complies with the requirements of the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Part 1026, the real estate settlement procedures act and regulation X, ((~~24~~)) 12 C.F.R. Part 1024, and all other applicable federal laws and regulations, as now or hereafter amended, constitutes compliance with this disclosure requirement. Each licensee must comply with all other applicable federal and state laws and regulations.

(3) In addition, for all loans made by the licensee that are secured by a lien on real property, the licensee must provide to the borrower an estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty within three days of receipt of a loan application. The annual percentage rate must be calculated in compliance with the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Part 1024. If a licensee provides the borrower with a disclosure in compliance with the requirements of the truth in lending act within three business days of receipt of a loan application, then the licensee has complied with this subsection. If the director determines that the federal government has required a disclosure that substantially meets the objectives of this subsection, then the director may make a determination by rule that compliance with this federal disclosure requirement constitutes compliance with this subsection.

(4) In addition for all consumer loans made by the licensee that are secured by a lien on real property, the licensee must comply with RCW 19.144.020.

(5) In addition for all consumer loans made by a licensee that are a refinance of a federal student education loan, the licensee must provide to the borrower a clear and conspicuous disclosure that some repayment and forgiveness options available under federal student education loan programs, including without limitation income-driven repayment plans, economic hardship deferments, or public service loan forgiveness, will no longer be available to the borrower if he or she chooses to refinance federal student education loans with one or more consumer loans.

(6) The director's obligations or duties under chapter 62, Laws of 2018 are subject to section 21, chapter 62, Laws of 2018.

**Sec.**  RCW 31.04.105 and 2015 c 229 s 28 are each amended to read as follows:

Every licensee may:

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

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

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

(4) In connection with the making of a loan secured by real estate, when the borrower actually obtains a loan, agree with the borrower to pay a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee;

(5) Collect at the time of the loan closing up to but not exceeding forty-five days of prepaid interest;

(6) Charge and collect a penalty of not more than ten percent of any installment payment delinquent ten days or more;

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

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

(9) Charge and collect a fee for dishonored checks in an amount approved by the director; ((~~and~~))

(10) Make a home equity sharing agreement at a rate that does not exceed the equivalent of 20 percent per annum as determined by the simple interest method of calculating interest owed; and

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

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