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**SUBSTITUTE SENATE BILL 6025**

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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, Nguyen, Saldaña, Trudeau, Valdez, and C. Wilson)

AN ACT Relating to protecting consumers from predatory loans; amending RCW 31.04.025, 31.04.027, and 31.04.035; and creating a new section.

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

NEW SECTION. **Sec.**  This act may be known and cited as the predatory loan prevention act.

**Sec.**  RCW 31.04.025 and 2023 c 275 s 15 are each amended to read as follows:

(1) Each loan made to a resident of or a person physically located in this state by a licensee, or persons subject to this chapter, is subject to the authority and restrictions of this chapter.

(2) A person may not engage in any device, subterfuge, or pretense to evade the requirements of this chapter including, but not limited to: Making loans disguised as personal property sale and leaseback transactions; disguising loan proceeds as a cash rebate for the pretextual installment sale of goods or services; or making, offering, assisting, or arranging a debtor to obtain a loan with a greater rate of interest, consideration, or charge than permitted by this chapter through any method, including mail, telephone, internet, or any electronic means regardless of whether the person has a physical location in the state.

(3) If a loan exceeds the rate permitted under this chapter, a person is a lender making a loan subject to the requirements of this chapter notwithstanding the fact that the person purports to act as an agent, service provider, or in another capacity for another person that is exempt from this chapter, if, among other things:

(a) The person holds, acquires, or maintains, directly or indirectly, the predominant economic interest in the loan; or

(b) The totality of the circumstances indicate that the person is the lender, and the transaction is structured to evade the requirements of this chapter.

(4) This chapter does not apply to the following:

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

(b) ((~~Entities~~)) Any person making loans under chapter 19.60 RCW (pawnbroking);

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

(d) ((~~Entities~~)) Any person making loans under chapter 31.45 RCW (check cashers and sellers);

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

(f) Any person selling property owned by that person who provides financing for the sale when the property does not contain a dwelling and when the property serves as security for the financing. This exemption is available for five or fewer transactions in a calendar year. This exemption is not available to individuals subject to the federal S.A.F.E. act or any person in the business of constructing or acting as a contractor for the construction of residential dwellings;

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

(h) ((~~Entities~~)) Any person making loans under chapter 43.185A RCW (housing trust fund);

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

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

(k) ((~~Entities~~)) Any person making loans which are not residential mortgage loans under a credit card plan;

(l) Individuals employed by a licensed residential mortgage loan servicing company engaging in activities related to servicing, unless licensing is required by federal law or regulation; and

(m) ((~~Entities~~)) Any person licensed under chapter 18.44 RCW that process payments on seller-financed loans secured by liens on real or personal property; and

(n) Any person that extends money or credit to another person on a nonrecourse basis in exchange for a contingent right to receive an amount of the potential proceeds of any award, judgment, settlement, verdict, or other resolution from a pending legal action. This exemption does not apply to any person that requires repayment in the event the person does not prevail in their civil proceeding.

((~~(3)~~)) (5) The director may, at his or her discretion, waive applicability of the consumer loan company licensing provisions of this chapter to other persons, not including individuals subject to the S.A.F.E. act, making or servicing loans when the director determines it necessary to facilitate commerce and protect consumers.

((~~(4)~~)) (6) The burden of proving the application for an exemption or exception from a definition, or a preemption of a provision of this chapter, is upon the person claiming the exemption, exception, or preemption.

((~~(5)~~)) (7) The director may adopt rules interpreting this section.

**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; or

(o) Engage in any device, subterfuge, or pretense to evade the requirements of this chapter including, but not limited to, making, offering, or assisting a borrower to obtain a loan with a greater rate of interest, consideration, or charge than is permitted by this chapter.

(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~~)) 15 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~~)) 15 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~~)) 45 calendar days, provided that such request is accompanied by an explanation why such additional time is reasonable and necessary.

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

**Sec.**  RCW 31.04.035 and 2018 c 62 s 12 are each amended to read as follows:

(1) No person may ((~~make secured or unsecured loans of money or things in action, or extend credit, or service or modify the terms or conditions of residential mortgage loans, or service or modify student education loans,~~)) engage in any activity subject to this chapter without first obtaining and maintaining a license in accordance with this chapter((~~, except those exempt under RCW 31.04.025 or not subject to licensure under RCW 31.04.420~~)).

(2) If a transaction violates subsection (1) of this section, any:

(a) Nonthird-party fees charged in connection with the origination of the residential mortgage loan must be refunded to the borrower, excluding interest charges; and

(b) ((~~Fees or interest charged in the making of a nonresidential loan must be refunded to the borrower~~)) Loan that is not a residential mortgage loan is null, void, uncollectable, and unenforceable.

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

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