
SUBSTITUTE SENATE BILL 5968

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)

READ FIRST TIME 01/26/24.

1 AN ACT Relating to regulating home equity sharing agreements
2 under the consumer loan act; and amending RCW 31.04.015, 31.04.027,
3 31.04.102, and 31.04.105.

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

5 **Sec. 1.** RCW 31.04.015 and 2018 c 62 s 9 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) "Add-on method" means the method of precomputing interest
10 payable on a loan whereby the interest to be earned is added to the
11 principal balance and the total plus any charges allowed under this
12 chapter is stated as the loan amount, without further provision for
13 the payment of interest except for failure to pay according to loan
14 terms. The director may adopt by rule a more detailed explanation of
15 the meaning and use of this method.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (17) "Mortgage broker" means the same as defined in RCW
15 19.146.010, except that for purposes of this chapter, a licensee or
16 person subject to this chapter cannot receive compensation as both a
17 consumer loan licensee making the loan and as a consumer loan
18 licensee acting as the mortgage broker in the same loan transaction.

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

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

39 (c) "Mortgage loan originator" does not include a person or
40 entity that only performs real estate brokerage activities and is

1 licensed or registered in accordance with applicable state law,
2 unless the person or entity is compensated by a lender, a mortgage
3 broker, or other mortgage loan originator or by any agent of such a
4 lender, mortgage broker, or other mortgage loan originator. For the
5 purposes of chapter 120, Laws of 2009, the term "real estate
6 brokerage activity" means any activity that involves offering or
7 providing real estate brokerage services to the public, including:

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

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

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

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

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

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

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

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

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

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

39 (23) "Registered mortgage loan originator" means any individual
40 who meets the definition of mortgage loan originator and is an

1 employee of a depository institution; a subsidiary that is owned and
2 controlled by a depository institution and regulated by a federal
3 banking agency; or an institution regulated by the farm credit
4 administration and is registered with, and maintains a unique
5 identifier through, the nationwide mortgage licensing system.

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

11 "Residential mortgage loan" includes home equity sharing agreements.

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

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

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

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

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

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

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

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

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

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

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

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

39 (35) "Student education loan servicing" or "service a student
40 education loan" means: (a) Receiving any scheduled periodic payments

1 from a student education loan borrower pursuant to the terms of a
2 student education loan; (b) applying the payments of principal and
3 interest and such other payments with respect to the amounts received
4 from a student education loan borrower, as may be required pursuant
5 to the terms of a student education loan; (c) working with the
6 student education loan borrower to collect data, or collecting data,
7 to make decisions to modify the loan; or (d) performing other
8 administrative services with respect to a student education loan
9 including collection activities. "Student education loan servicing"
10 does not include third-party student education loan modification
11 services.

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

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

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

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

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

37 **Sec. 2.** RCW 31.04.027 and 2021 c 15 s 1 are each amended to read
38 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (a) Conduct licensable activity from any unlicensed location;

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

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

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

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

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

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

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

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

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

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

22 (b) Charge any prepayment penalty;

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

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

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

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

32 **Sec. 3.** RCW 31.04.102 and 2018 c 62 s 14 are each amended to
33 read as follows:

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

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

16 (3) In addition, for all loans made by the licensee that are
17 secured by a lien on real property, the licensee must provide to the
18 borrower an estimate of the annual percentage rate on the loan and a
19 disclosure of whether or not the loan contains a prepayment penalty
20 within three days of receipt of a loan application. The annual
21 percentage rate must be calculated in compliance with the truth in
22 lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Part
23 1024. If a licensee provides the borrower with a disclosure in
24 compliance with the requirements of the truth in lending act within
25 three business days of receipt of a loan application, then the
26 licensee has complied with this subsection. If the director
27 determines that the federal government has required a disclosure that
28 substantially meets the objectives of this subsection, then the
29 director may make a determination by rule that compliance with this
30 federal disclosure requirement constitutes compliance with this
31 subsection.

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

35 (5) In addition for all consumer loans made by a licensee that
36 are a refinance of a federal student education loan, the licensee
37 must provide to the borrower a clear and conspicuous disclosure that
38 some repayment and forgiveness options available under federal
39 student education loan programs, including without limitation income-
40 driven repayment plans, economic hardship deferments, or public

1 service loan forgiveness, will no longer be available to the borrower
2 if he or she chooses to refinance federal student education loans
3 with one or more consumer loans.

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

6 **Sec. 4.** RCW 31.04.105 and 2015 c 229 s 28 are each amended to
7 read as follows:

8 Every licensee may:

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

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

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

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

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

- 1 (6) Charge and collect a penalty of not more than ten percent of
2 any installment payment delinquent ten days or more;
- 3 (7) Collect from the debtor reasonable attorneys' fees, actual
4 expenses, and costs incurred in connection with the collection of a
5 delinquent debt, a repossession, or a foreclosure when a debt is
6 referred for collection to an attorney who is not a salaried employee
7 of the licensee;
- 8 (8) Make open-end loans as provided in this chapter;
- 9 (9) Charge and collect a fee for dishonored checks in an amount
10 approved by the director; (~~and~~)
- 11 (10) Make a home equity sharing agreement at a rate that does not
12 exceed the equivalent of 20 percent per annum as determined by the
13 simple interest method of calculating interest owed; and
- 14 (11) In accordance with Title 48 RCW, sell insurance covering
15 real and personal property, covering the life or disability or both
16 of the borrower, and covering the involuntary unemployment of the
17 borrower.

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