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**SENATE BILL 5968**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** Senators Stanford, Dhingra, Frame, Hasegawa, Kuderer, Saldaña, Trudeau, Valdez, and C. Wilson

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1 AN ACT Relating to regulating home equity sharing agreements  
2 under the consumer loan act; amending RCW 31.04.015 and 31.04.102;  
3 and adding a new section to chapter 31.04 RCW.

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 residential real estate or a future obligation to pay  
36 a sum upon the occurrence of an agreed-upon event.

37 **Sec. 2.** RCW 31.04.102 and 2018 c 62 s 14 are each amended to  
38 read as follows:

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

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

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

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



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

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

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

14 (1) A home equity sharing agreement:

15 (a) May not be used as a lien against the real property;

16 (b) May not run with title to real property and is not binding or  
17 enforceable at law or in equity against any subsequent owner,  
18 purchaser, or mortgagee or holder of any interest in real property as  
19 an equitable servitude;

20 (c) May not prevent the property owner from renting or using the  
21 real property as the property owner chooses; and

22 (d) May not contain provisions that prevent the property owner  
23 from refinancing a mortgage or lien on the real property.

24 (2) The total amount due under a home equity sharing agreement  
25 must not exceed the lesser of:

26 (a) Any amount paid to the borrower plus the interest amount  
27 calculated in accordance with this chapter; or

28 (b) 200 percent of the amount paid to the borrower.

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