

HOUSE BILL 1874

State of Washington 68th Legislature 2024 Regular Session

By Representatives Walen, Robertson, Ryu, Morgan, Leavitt, Ortiz-Self, Ramel, and Duerr

Prefiled 12/05/23.

AN ACT Relating to protecting consumers from predatory loans; amending RCW 31.04.015, 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. 1.** This act may be known and cited as the predatory loan prevention act.

Sec. 2. 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))~~ money or credit provided to a borrower in exchange for the borrower's agreement to a certain set of terms including, but not limited to, any finance charges, interest, or other charges, conditions, or considerations. "Loan" includes open-end and closed-end credit, and any transaction conducted via any medium whatsoever including, but not limited to, paper, facsimile, internet, or telephone. Any transaction that satisfies the definition of a "loan" is subject to this chapter without regard to the lender's means of collection, whether the lender has legal recourse against the borrower in the event of nonrepayment, and whether the transaction carries required charges or payments.

(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))~~ 10 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.

(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.

Sec. 3. 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))~~ 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 act, 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.
- ~~((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. 4. 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. 5. 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.

--- END ---