
SENATE BILL 5759

State of Washington

61st Legislature

2009 Regular Session

By Senators Berkey, Benton, and Hobbs

Read first time 01/30/09. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to regulating the business practices of consumer
2 loan companies for compliance with the secure and fair enforcement for
3 mortgage licensing act of 2008; amending RCW 31.04.015, 31.04.025,
4 31.04.035, 31.04.045, 31.04.102, 31.04.105, 31.04.145, and 31.04.165;
5 adding new sections to chapter 31.04 RCW; creating a new section; and
6 providing an effective date.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 31.04 RCW
9 to read as follows:

10 The legislature finds and declares that accessibility to credit is
11 vital to the citizens of this state. The legislature declares that it
12 is essential for the protection of citizens of this state and the
13 stability of the state's economy that standards for licensing and
14 regulation of the business practices of lenders be imposed. The
15 legislature further finds that the activities of lenders and mortgage
16 loan originators and the origination or offering of financing for
17 residential real property have a direct, valuable, and immediate impact
18 upon this state's consumers, this state's economy, the neighborhoods
19 and communities of this state, and the housing and real estate

1 industry. The legislature therefore declares that this act is
2 necessary to encourage responsible lending in all credit transactions,
3 to protect borrowers, and to preserve access to credit in the
4 residential real estate lending market.

5 **Sec. 2.** RCW 31.04.015 and 2001 c 81 s 1 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) "Person" includes individuals, partnerships, associations,
10 limited liability companies, limited liability partnerships, trusts,
11 corporations, and all other legal entities.~~

12 ~~(2) "License" means a single license issued under the authority of
13 this chapter with respect to a single place of business.~~

14 ~~(3) "Licensee" means a person to whom one or more licenses have
15 been issued.~~

16 ~~(4) "Director" means the director of financial institutions.~~

17 ~~(5) "Insurance" means life insurance, disability insurance,
18 property insurance, involuntary unemployment insurance, and such other
19 insurance as may be authorized by the insurance commissioner.~~

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

27 ~~(7) "Simple interest method" means the method of computing interest
28 payable on a loan by applying the annual percentage interest rate or
29 its periodic equivalent to the unpaid balances of the principal of the
30 loan outstanding for the time outstanding with each payment applied
31 first to any unpaid penalties, fees, or charges, then to accumulated
32 interest, and the remainder of the payment applied to the unpaid
33 balance of the principal until paid in full. In using such method,
34 interest shall not be payable in advance nor compounded, except that on
35 a loan secured by real estate, a licensee may collect at the time of
36 the loan closing up to but not exceeding forty five days of prepaid~~

1 interest. ~~The director may adopt by rule a more detailed explanation~~
2 ~~of the meaning and use of this method.~~

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

5 ~~(9) "Borrower" means any person who consults with or retains a~~
6 ~~licensee or person subject to this chapter in an effort to obtain or~~
7 ~~seek information about obtaining a loan, regardless of whether that~~
8 ~~person actually obtains such a loan.~~

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

12 ~~(11) "Loan originator" means a person employed, either directly or~~
13 ~~indirectly, or retained as an independent contractor by a licensee, to~~
14 ~~make or assist a person in applying to obtain a loan.~~

15 ~~(12) "Making a loan" means closing a loan in a person's name, or~~
16 ~~advancing, offering to advance, or making a commitment to advance funds~~
17 ~~to a borrower for a loan.~~

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

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

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

30 ~~(16) "Senior officer" means an officer of a licensee at the vice~~
31 ~~president level or above.~~

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

(1) "Add-on method" means the method of

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

7 (2) "Applicant" means a person applying for a license under this
8 chapter.

9 (3) "Borrower" means any person who consults with or retains a
10 licensee or person subject to this chapter in an effort to obtain or
11 seek information about obtaining a loan, regardless of whether that
12 person actually obtains such a loan.

13 (4) "Depository institution" has the same meaning as in section 3
14 of the federal deposit insurance act on the effective date of this
15 section, and includes credit unions.

16 (5) "Director" means the director of financial institutions.

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

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

24 (8) "License" means a single license issued under the authority of
25 this chapter with respect to a single place of business.

26 (9) "Licensee" means a person to whom one or more licenses have
27 been issued.

28 (10) "Loan" means a sum of money lent at interest or for a fee or
29 other charge and includes both open-end and closed-end loan
30 transactions.

31 (11) "Loan processor" means an individual who performs clerical or
32 support duties as an employee at the direction of and subject to the
33 supervision and instruction of a person licensed, or exempt from
34 licensing, under chapter 19.146 RCW.

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

37 (13) "Mortgage broker" means the same as defined in RCW 19.146.010,
38 except that for purposes of this chapter, a licensee or person subject

1 to this chapter cannot receive compensation as both a consumer loan
2 licensee making the loan and as a consumer loan licensee acting as the
3 mortgage broker in the same loan transaction.

4 (14)(a) "Mortgage loan originator" means an individual who for
5 compensation or gain (i) takes a residential mortgage loan application,
6 or (ii) offers or negotiates terms of a residential mortgage loan.
7 "Mortgage loan originator" does not include any individual who performs
8 purely administrative or clerical tasks; and does not include a person
9 or entity solely involved in extensions of credit relating to timeshare
10 plans, as that term is defined in section 101(53D) of Title 11, United
11 States Code. For the purposes of this definition, administrative or
12 clerical tasks means the receipt, collection, and distribution of
13 information common for the processing of a loan in the mortgage
14 industry and communication with a consumer to obtain information
15 necessary for the processing of a residential mortgage loan.

16 (b) "Mortgage loan originator" does not include a person or entity
17 that only performs real estate brokerage activities and is licensed or
18 registered in accordance with applicable state law, unless the person
19 or entity is compensated by a lender, a mortgage broker, or other
20 mortgage loan originator or by any agent of such a lender, mortgage
21 broker, or other mortgage loan originator. For the purposes of this
22 act the term "real estate brokerage activity" means any activity that
23 involves offering or providing real estate brokerage services to the
24 public, including:

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

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

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

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

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

1 (15) "Nationwide mortgage licensing system and registry" means a
2 mortgage licensing system developed and maintained by the conference of
3 state bank supervisors and the American association of residential
4 mortgage regulators for the licensing and registration of mortgage loan
5 originators.

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

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

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

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

23 (20) "Residential mortgage loan" means any loan primarily for
24 personal, family, or household use that is secured by a mortgage, deed
25 of trust, or other equivalent consensual security interest on a
26 dwelling, as defined in section 103(v) of the truth in lending act, or
27 residential real estate upon which is constructed or intended to be
28 constructed a dwelling.

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

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

34 (23) "Simple interest method" means the method of computing
35 interest payable on a loan by applying the annual percentage interest
36 rate or its periodic equivalent to the unpaid balances of the principal
37 of the loan outstanding for the time outstanding with each payment
38 applied first to any unpaid penalties, fees, or charges, then to

1 accumulated interest, and the remainder of the payment applied to the
2 unpaid balance of the principal until paid in full. In using such
3 method, interest shall not be payable in advance nor compounded, except
4 that on a loan secured by real estate, a licensee may collect at the
5 time of the loan closing up to but not exceeding forty-five days of
6 prepaid interest. The director may adopt by rule a more detailed
7 explanation of the meaning and use of this method.

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

15 (25) "Unique identifier" means a number or other identifier
16 assigned by protocols established by the nationwide mortgage licensing
17 system and registry.

18 **Sec. 3.** RCW 31.04.025 and 2008 c 78 s 1 are each amended to read
19 as follows:

20 (1) Each loan made to a resident of this state by a consumer loan
21 company licensee is subject to the authority and restrictions of this
22 chapter, ((unless such loan is made under the authority of chapter
23 63.14 RCW. This chapter shall not apply to any person doing business
24 under and as permitted by any law of this state or of the United States
25 relating to banks, savings banks, trust companies, savings and loan or
26 building and loan associations, or credit unions, nor to any
27 pawnbroking business lawfully transacted under and as permitted by any
28 law of this state regulating pawnbrokers, nor to any loan of credit
29 made pursuant to a credit card plan)) with the following exceptions:

- 30 (a) Loans made under chapter 19.60 RCW (pawnbroking);
31 (b) Loans made under chapter 63.14 RCW (retail installment sales of
32 goods and services);
33 (c) Loans made under chapter 31.45 RCW (check cashers and sellers);
34 (d) Loans made primarily for business, commercial, or agricultural
35 purposes, or loans made to government or government agencies or
36 instrumentalities, or to organizations as defined in the federal truth
37 in lending act;

1 (e) Loans made under chapter 43.185 RCW (housing trust fund);

2 (f) Loans made under programs of the United States department of
3 agriculture, department of housing and urban development, or other
4 federal government program that provides funding or access to funding
5 for single-family housing developments or grants to low-income
6 individuals for the purchase or repair of single-family housing;

7 (g) Loans made to an immediate family member;

8 (h) Five or fewer loans made each year by an individual for any
9 amount secured by residential real estate as long as the individual
10 uses their own funds and does not sell the residential mortgage loan;
11 and

12 (i) Loans made under a credit card plan.

13 (2) This chapter does not apply to:

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

18 (b) Attorneys licensed to practice law in the state of Washington
19 who are not principally engaged in the business of making or
20 negotiating residential mortgage loans.

21 (3) The director may, at his or her discretion, waive applicability
22 of this chapter to other persons making loans when the director
23 determines it necessary to facilitate commerce and protect consumers.
24 The director may adopt rules interpreting this section.

25 **Sec. 4.** RCW 31.04.035 and 2008 c 78 s 2 are each amended to read
26 as follows:

27 No person may engage in the business of making secured or unsecured
28 loans of money, credit, or things in action without first obtaining and
29 maintaining a license in accordance with this chapter, except those
30 exempt under RCW 31.04.025.

31 **Sec. 5.** RCW 31.04.045 and 2001 c 81 s 4 are each amended to read
32 as follows:

33 (1) Application for a license under this chapter must be (~~in~~
34 ~~writing~~) made to the nationwide mortgage licensing system and registry
35 and in the form prescribed by the director. The application must
36 contain at least the following information:

1 (a) The name and the business addresses of the applicant;

2 (b) If the applicant is a partnership or association, the name of
3 every member;

4 (c) If the applicant is a corporation, the name, residence address,
5 and telephone number of each officer and director;

6 (d) The street address, county, and municipality from which
7 business is to be conducted; and

8 (e) Such other information as the director may require by rule.

9 (2) As part of or in connection with an application for any license
10 under this section, or periodically upon license renewal, each officer,
11 director, and owner applicant shall furnish information concerning his
12 or her identity, including fingerprints for submission to the
13 Washington state patrol, the federal bureau of investigation, the
14 nationwide mortgage licensing system and registry, and any governmental
15 agency or entity authorized to receive this information for a state and
16 national criminal history background check; personal history;
17 experience; business record; purposes; and other pertinent facts, as
18 the director may reasonably require. As part of or in connection with
19 an application for a license under this chapter, or periodically upon
20 license renewal, the director is authorized to receive criminal history
21 record information that includes nonconviction data as defined in RCW
22 10.97.030. The department may only disseminate nonconviction data
23 obtained under this section to criminal justice agencies. This section
24 does not apply to financial institutions regulated under chapters 31.12
25 and 31.13 RCW and Titles 30, 32, and 33 RCW.

26 (3) In order to reduce the points of contact which the federal
27 bureau of investigation may have to maintain, the director may use the
28 nationwide mortgage licensing system and registry as a channeling agent
29 for requesting information from and distributing information to the
30 department of justice or any governmental agency.

31 (4) In order to reduce the points of contact which the director may
32 have to maintain, the director may use the nationwide mortgage
33 licensing system and registry as a channeling agent for requesting and
34 distributing information to and from any source so directed by the
35 director.

36 (5) At the time of filing an application for a license under this
37 chapter, each applicant shall pay to the director through the
38 nationwide mortgage licensing system and registry an investigation fee

1 and the license fee in an amount determined by rule of the director to
2 be sufficient to cover the director's costs in administering this
3 chapter.

4 ~~((3))~~ (6) Each applicant shall file and maintain a surety bond,
5 approved by the director, executed by the applicant as obligor and by
6 a surety company authorized to do a surety business in this state as
7 surety, whose liability as such surety shall not exceed in the
8 aggregate the penal sum of the bond. The penal sum of the bond shall
9 be ~~((one hundred thousand dollars for each licensed location up to and
10 including five licensed locations, and an additional ten thousand
11 dollars for each licensed location in excess of five licensed
12 locations, except that a licensee who makes a loan secured by real
13 property shall maintain at a minimum a surety bond with a penal sum of
14 not less than four hundred thousand dollars))~~ a minimum of thirty
15 thousand dollars and based on the annual dollar amount of loans
16 originated. The bond shall run to the state of Washington as obligee
17 for the use and benefit of the state and of any person or persons who
18 may have a cause of action against the obligor under this chapter. The
19 bond shall be conditioned that the obligor as licensee will faithfully
20 conform to and abide by this chapter and all the rules adopted under
21 this chapter. The bond will pay to the state and any person or persons
22 having a cause of action against the obligor all moneys that may become
23 due and owing to the state and those persons under and by virtue of
24 this chapter. In lieu of a surety bond, if the applicant is a
25 Washington business corporation, the applicant may maintain unimpaired
26 capital, surplus, and long-term subordinated debt in an amount that at
27 any time its outstanding promissory notes or other evidences of debt
28 (other than long-term subordinated debt) in an aggregate sum do not
29 exceed three times the aggregate amount of its unimpaired capital,
30 surplus, and long-term subordinated debt. The director may define
31 qualifying "long-term subordinated debt" for purposes of this section.

32 **Sec. 6.** RCW 31.04.102 and 2002 c 346 s 1 are each amended to read
33 as follows:

34 (1) For all loans made by a licensee that are not secured by a lien
35 on real property, the licensee must make disclosures in compliance with
36 the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12

1 C.F.R. (~~Sec. [Part]~~) Part 226, and all other applicable federal laws
2 and regulations.

3 (2) For all loans made by a licensee that are secured by a lien on
4 real property, the licensee shall provide to each borrower within three
5 business days following receipt of a loan application a written
6 disclosure containing an itemized estimation and explanation of all
7 fees and costs that the borrower is required to pay in connection with
8 obtaining a loan from the licensee. A good faith estimate of a fee or
9 cost shall be provided if the exact amount of the fee or cost is not
10 available when the disclosure is provided. Disclosure in a form which
11 complies with the requirements of the truth in lending act, 15 U.S.C.
12 Sec. 1601 and regulation Z, 12 C.F.R. (~~Sec. [Part]~~) Part 226, the
13 real estate settlement procedures act and regulation X, 24 C.F.R. Sec.
14 3500, and all other applicable federal laws and regulations, as now or
15 hereafter amended, shall be deemed to constitute compliance with this
16 disclosure requirement. Each licensee shall comply with all other
17 applicable federal and state laws and regulations.

18 (3) In addition, for all loans made by the licensee that are
19 secured by a lien on real property, the licensee must provide to the
20 borrower an estimate of the annual percentage rate on the loan and a
21 disclosure of whether or not the loan contains a prepayment penalty
22 within three days of receipt of a loan application. The annual
23 percentage rate must be calculated in compliance with the truth in
24 lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. (~~Sec.~~
25 ~~[Part]~~) Part 226. If a licensee provides the borrower with a
26 disclosure in compliance with the requirements of the truth in lending
27 act within three business days of receipt of a loan application, then
28 the licensee has complied with this subsection. If the director
29 determines that the federal government has required a disclosure that
30 substantially meets the objectives of this subsection, then the
31 director may make a determination by rule that compliance with this
32 federal disclosure requirement constitutes compliance with this
33 subsection.

34 (4) In addition for all consumer loans made by the licensee that
35 are secured by a lien on real property, the licensee must provide the
36 borrower with the one-page disclosure summary required in RCW
37 19.144.020.

1 **Sec. 7.** RCW 31.04.105 and 2001 c 81 s 10 are each amended to read
2 as follows:

3 Every licensee may:

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

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

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

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

33 (5) Charge and collect a penalty of not more than ten (~~cents or~~
34 ~~less on each dollar~~) percent of any installment payment delinquent ten
35 days or more;

36 (6) Collect from the debtor reasonable attorneys' fees, actual
37 expenses, and costs incurred in connection with the collection of a

1 delinquent debt, a repossession, or a foreclosure when a debt is
2 referred for collection to an attorney who is not a salaried employee
3 of the licensee;

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

5 (8) Charge and collect a fee for dishonored checks in an amount
6 approved by the director; and

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

10 **Sec. 8.** RCW 31.04.145 and 2001 c 81 s 11 are each amended to read
11 as follows:

12 (1) For the purpose of discovering violations of this chapter or
13 securing information lawfully required under this chapter, the director
14 may at any time, either personally or by designees, investigate or
15 examine the loans and business and, wherever located, the books,
16 accounts, records, papers, documents, files, and other information used
17 in the business of every licensee and of every person who is engaged in
18 the business making or assisting in the making of loans at interest
19 rates authorized by this chapter, whether the person acts or claims to
20 act as principal or agent, or under or without the authority of this
21 chapter. For these purposes, the director or designated
22 representatives shall have free access to the offices and places of
23 business, books, accounts, papers, documents, other information,
24 records, files, safes, and vaults of all such persons. The director or
25 persons designated by the director may require the attendance of and
26 examine under oath all persons whose testimony may be required about
27 the loans or the business or the subject matter of any investigation,
28 examination, or hearing and may require such person to produce books,
29 accounts, papers, records, files, and any other information the
30 director or designated persons deem relevant to the inquiry. The
31 director may require the production of original books, accounts,
32 papers, records, files, and other information; may require that such
33 original books, accounts, papers, records, files, and other information
34 be copied; or may make copies himself or herself or by designee of such
35 original books, accounts, papers, records, files, or other information.
36 If a licensee or person does not attend and testify, or does not
37 produce the requested books, accounts, papers, records, files, or other

1 information, then the director or designated persons may issue a
2 subpoena or subpoena duces tecum requiring attendance or compelling
3 production of the books, accounts, papers, records, files, or other
4 information.

5 (2) The director shall make such periodic examinations of the
6 affairs, business, office, and records of each licensee as determined
7 by rule.

8 (3) Every licensee examined or investigated by the director or the
9 director's designee shall pay to the director the cost of the
10 examination or investigation of each licensed place of business as
11 determined by rule by the director.

12 (4) In order to carry out the purposes of this section, the
13 director may:

14 (a) Retain attorneys, accountants, or other professionals and
15 specialists as examiners, auditors, or investigators to conduct or
16 assist in the conduct of examinations or investigations;

17 (b) Enter into agreements or relationships with other government
18 officials or regulatory associations in order to improve efficiencies
19 and reduce regulatory burden by sharing resources, standardized or
20 uniform methods or procedures, and documents, records, information, or
21 evidence obtained under this section;

22 (c) Use, hire, contract, or employ public or privately available
23 analytical systems, methods, or software to examine or investigate the
24 licensee, individual, or person subject to this act;

25 (d) Accept and rely on examination or investigation reports made by
26 other government officials, within or without this state;

27 (e) Accept audit reports made by an independent certified public
28 accountant for the licensee, individual, or person subject to this act
29 in the course of that part of the examination covering the same general
30 subject matter as the audit and may incorporate the audit report in the
31 report of the examination, report of investigation, or other writing of
32 the director; or

33 (f) Assess the licensee, individual, or person subject to this act
34 the cost of the services in (a) of this subsection.

35 NEW SECTION. Sec. 9. A new section is added to chapter 31.04 RCW
36 to read as follows:

37 The authority of this chapter remains in effect, whether such a

1 licensee, individual, or person subject to this act acts or claims to
2 act under any licensing or registration law of this state, or claims to
3 act without such an authority.

4 NEW SECTION. **Sec. 10.** A new section is added to chapter 31.04 RCW
5 to read as follows:

6 An individual defined as a mortgage loan originator shall not
7 engage in the business of a mortgage loan originator without first
8 obtaining and maintaining annually a license under this act. Each
9 licensed mortgage loan originator must register with and maintain a
10 valid unique identifier issued by the nationwide mortgage licensing
11 system and registry.

12 NEW SECTION. **Sec. 11.** A new section is added to chapter 31.04 RCW
13 to read as follows:

14 An independent contractor may not engage in residential mortgage
15 loan origination activities as a loan processor unless the independent
16 contractor obtains and maintains a license under this chapter. Each
17 independent contractor loan processor licensed as a mortgage loan
18 originator must have and maintain a valid unique identifier issued by
19 the nationwide mortgage licensing system and registry.

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

22 An individual engaging solely in loan processor activities, who
23 does not represent to the public, through advertising or other means of
24 communicating or providing information including the use of business
25 cards, stationery, brochures, signs, rate lists, or other promotional
26 items, that such an individual can or will perform any of the
27 activities of a mortgage loan originator is not required to obtain and
28 maintain a mortgage loan originator license under this chapter.

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

31 Registered mortgage loan originators, or any individual required to
32 be registered, and working for depository institutions are exempt from
33 this chapter.

1 NEW SECTION. **Sec. 14.** A new section is added to chapter 31.04 RCW
2 to read as follows:

3 Applicants for a mortgage loan originator license shall apply on a
4 form as prescribed by the director. Each form must contain content as
5 set forth by rule, regulation, instruction, or procedure of the
6 director and may be changed or updated as necessary by the director in
7 order to carry out the purposes of this chapter.

8 NEW SECTION. **Sec. 15.** A new section is added to chapter 31.04 RCW
9 to read as follows:

10 In order to fulfill the purposes of this act, the director is
11 authorized to establish relationships or contracts with the nationwide
12 mortgage licensing system and registry or other entities designated by
13 the nationwide mortgage licensing system and registry to collect and
14 maintain records and process transaction fees or other fees related to
15 licensees or other persons subject to this chapter.

16 NEW SECTION. **Sec. 16.** A new section is added to chapter 31.04 RCW
17 to read as follows:

18 (1) As part of or in connection with an application for any license
19 under this section, or periodically upon license renewal, the mortgage
20 loan originator applicant shall furnish information concerning his or
21 her identity, including fingerprints for submission to the Washington
22 state patrol, the federal bureau of investigation, the nationwide
23 mortgage licensing system and registry, and any governmental agency or
24 entity authorized to receive this information for a state and national
25 criminal history background check; personal history; experience;
26 business record; purposes; and other pertinent facts, as the director
27 may reasonably require. As part of or in connection with an
28 application for a license under this chapter, or periodically upon
29 license renewal, the director is authorized to receive criminal history
30 record information that includes nonconviction data as defined in RCW
31 10.97.030. The department may only disseminate nonconviction data
32 obtained under this section to criminal justice agencies. This section
33 does not apply to financial institutions regulated under chapters 31.12
34 and 31.13 RCW and Titles 30, 32, and 33 RCW.

35 (2) As part of or in connection with an application for any license
36 under this section, the mortgage loan originator applicant shall

1 furnish information pertaining to personal history and experience in a
2 form prescribed by the nationwide mortgage licensing system and
3 registry, including (a) the submission of authorization for the
4 nationwide mortgage licensing system and registry and the director to
5 obtain an independent credit report obtained from a consumer reporting
6 agency described in section 603(p) of the federal fair credit reporting
7 act, and (b) information related to any administrative, civil, or
8 criminal findings by any governmental jurisdiction.

9 (3) In order to reduce the points of contact which the federal
10 bureau of investigation may have to maintain, the director may use the
11 nationwide mortgage licensing system and registry as a channeling agent
12 for requesting information from and distributing information to the
13 department of justice or any governmental agency.

14 (4) In order to reduce the points of contact which the director may
15 have to maintain, the director may use the nationwide mortgage
16 licensing system and registry as a channeling agent for requesting and
17 distributing information to and from any source so directed by the
18 director.

19 NEW SECTION. **Sec. 17.** A new section is added to chapter 31.04 RCW
20 to read as follows:

21 (1) The application for a mortgage loan originator license must
22 contain at least the following information:

23 (a) The name, address, date of birth, and social security number of
24 the mortgage loan originator applicant, and any other names, dates of
25 birth, or social security numbers previously used by the mortgage loan
26 originator applicant, unless waived by the director; and

27 (b) Other information regarding the mortgage loan originator
28 applicant's background, experience, character, and general fitness as
29 the director may require by rule, or as deemed necessary by the
30 nationwide mortgage licensing system and registry.

31 (2) At the time of filing an application for a license or a license
32 renewal under this chapter, each mortgage loan originator applicant
33 shall pay to the director through the nationwide mortgage licensing
34 system and registry the application or renewal fee of one hundred fifty
35 dollars. The director shall deposit the moneys in the financial
36 services regulation fund.

1 NEW SECTION. **Sec. 18.** A new section is added to chapter 31.04 RCW
2 to read as follows:

3 (1) The director shall issue and deliver a mortgage loan originator
4 license if, after investigation, the director makes at a minimum the
5 following findings:

6 (a) The applicant has paid the required license fees;

7 (b) The applicant has met the requirements of this chapter;

8 (c) The applicant has never had a mortgage loan originator license
9 revoked in any governmental jurisdiction, except that, for the purposes
10 of this subsection, a subsequent formal vacation of such revocation is
11 not a revocation;

12 (d) The applicant has not been convicted of, or pled guilty or nolo
13 contendere to, a felony in a domestic, foreign, or military court (i)
14 during the seven-year period preceding the date of the application for
15 licensing and registration; or (ii) at any time preceding the date of
16 application, if the felony involved an act of fraud, dishonesty, breach
17 of trust, or money laundering;

18 (e) The applicant has demonstrated financial responsibility,
19 character, and general fitness such as to command the confidence of the
20 community and to warrant a determination that the mortgage loan
21 originator will operate honestly, fairly, and efficiently within the
22 purposes of this act. For the purposes of this section, an applicant
23 has not demonstrated financial responsibility when the applicant shows
24 disregard in the management of his or her financial condition. A
25 determination that an individual has shown disregard in the management
26 of his or her financial condition may include, but is not limited to,
27 an assessment of: Current outstanding judgments, except judgments
28 solely as a result of medical expenses; current outstanding tax liens
29 or other government liens and filings; foreclosures within the last
30 three years; or a pattern of seriously delinquent accounts within the
31 past three years;

32 (f) The applicant has completed the prelicensing education
33 requirement as required by this chapter;

34 (g) The applicant has passed a written test that meets the test
35 requirement as required by this chapter;

36 (h) The consumer loan licensee that the applicant works for has met
37 the surety bond requirement as required by this chapter;

1 (i) The applicant has not been found to be in violation of this
2 chapter or rules adopted under this chapter;

3 (j) The mortgage loan originator licensee has completed, during the
4 calendar year preceding a licensee's annual license renewal date,
5 continuing education as required by this chapter.

6 (2) If the director finds the conditions of this section have not
7 been met, the director shall not issue the mortgage loan originator
8 license. The director shall notify the applicant of the denial and
9 return to the mortgage loan originator applicant any remaining portion
10 of the license fee that exceeds the department's actual cost to
11 investigate the license.

12 NEW SECTION. **Sec. 19.** A new section is added to chapter 31.04 RCW
13 to read as follows:

14 (1) A mortgage loan originator license issued under this section
15 expires annually. The director shall establish rules regarding the
16 mortgage loan originator license renewal process created under this
17 chapter. At a minimum a mortgage loan originator may not renew a
18 license under this chapter unless the mortgage loan originator
19 continues to meet the minimum standards for a license, and has
20 satisfied the annual continuing education requirements.

21 (2) A mortgage loan originator licensee may surrender a license by
22 delivering to the director through the nationwide mortgage licensing
23 system and registry written notice of surrender, but the surrender does
24 not affect the mortgage loan originator licensee's civil or criminal
25 liability or any administrative actions arising from acts or omissions
26 occurring before such a surrender.

27 NEW SECTION. **Sec. 20.** A new section is added to chapter 31.04 RCW
28 to read as follows:

29 For the purposes of implementing an orderly and efficient licensing
30 process, the director may establish licensing rules and interim
31 procedures for licensing and acceptance of applications. For
32 previously registered or licensed individuals the director may
33 establish expedited review and licensing procedures.

34 NEW SECTION. **Sec. 21.** A new section is added to chapter 31.04 RCW
35 to read as follows:

1 To prevent undue delay in the issuance of a mortgage loan
2 originator license and to facilitate the business of a mortgage loan
3 originator, an interim license with a fixed date of expiration may be
4 issued when the director determines that the mortgage loan originator
5 has substantially fulfilled the requirements for mortgage loan
6 originator licensing.

7 NEW SECTION. **Sec. 22.** A new section is added to chapter 31.04 RCW
8 to read as follows:

9 (1) Each applicant shall complete at least twenty hours of
10 prelicensing education approved and administered by the nationwide
11 mortgage licensing system and registry. The prelicensing education
12 shall include at least three hours of federal law and regulations;
13 three hours of ethics, which shall include instruction on fraud,
14 consumer protection, and fair lending issues; two hours of training
15 related to lending standards for the nontraditional mortgage product
16 marketplace; and at least two hours of training specifically related to
17 Washington law.

18 (2) An applicant having successfully completed the prelicensing
19 education requirements approved and administered by the nationwide
20 mortgage licensing system and registry for any state shall be accepted
21 as credit towards completion of prelicensing education requirements in
22 this state.

23 (3) This chapter does not preclude any prelicensing education
24 course, as approved by the nationwide mortgage licensing system and
25 registry, that is provided by the employer of the applicant or an
26 entity which is affiliated with the applicant by an agency contract, or
27 any subsidiary or affiliate of such an employer or entity.
28 Prelicensing education may be offered either in a classroom, online, or
29 by any other means approved by the nationwide mortgage licensing system
30 and registry.

31 NEW SECTION. **Sec. 23.** A new section is added to chapter 31.04 RCW
32 to read as follows:

33 (1) To obtain a license, an individual must pass a test developed
34 by the nationwide mortgage licensing system and registry and
35 administered by a test provider approved by the nationwide mortgage
36 licensing system and registry based upon reasonable standards.

1 (2) An individual is not considered to have passed a test unless
2 the individual achieves a test score of not less than seventy-five
3 percent correct answers to questions.

4 (a) An individual may retake a test three consecutive times with
5 each consecutive taking occurring at least thirty days after the
6 preceding test.

7 (b) After failing three consecutive tests, an individual must wait
8 at least six months before taking the test again.

9 (c) A licensed mortgage loan originator who fails to maintain a
10 valid license for a period of five years or longer must retake the
11 test, not taking into account any time during which that individual is
12 a registered mortgage loan originator.

13 (3) This section does not prohibit a test provider approved by the
14 nationwide mortgage licensing system and registry from providing a test
15 at the location of the employer of the applicant or any subsidiary or
16 affiliate of the employer of the applicant, or any entity with which
17 the applicant holds an exclusive arrangement to conduct the business of
18 a mortgage loan originator.

19 NEW SECTION. **Sec. 24.** A new section is added to chapter 31.04 RCW
20 to read as follows:

21 (1) A licensed mortgage loan originator must complete a minimum of
22 eight hours of continuing education approved and administered by the
23 nationwide mortgage licensing system and registry which must include at
24 least three hours of federal law and regulations; two hours of ethics,
25 which must include instruction on fraud, consumer protection, and fair
26 lending issues; and two hours of training related to lending standards
27 for the nontraditional mortgage product marketplace. Additionally, the
28 director may require at least one hour of continuing education on
29 Washington law provided by and administered through an approved
30 provider.

31 (2) The nationwide mortgage licensing system and registry must
32 review and approve continuing education courses. Review and approval
33 of a continuing education course must include review and approval of
34 the course provider.

35 (3) A licensed mortgage loan originator may only receive credit for
36 a continuing education course in the year in which the course is taken,

1 and may not take the same approved course in the same or successive
2 years to meet the annual requirements for continuing education.

3 (4) A licensed mortgage loan originator who is an instructor of an
4 approved continuing education course may receive credit for the
5 licensed mortgage loan originator's own annual continuing education
6 requirement at the rate of two hours credit for every one hour taught.

7 (5) A person having successfully completed the education
8 requirements approved by the nationwide mortgage licensing system and
9 registry for any state must have their credits accepted as credit
10 towards completion of continuing education requirements in this state.

11 (6) This section does not preclude any education course, as
12 approved by the nationwide mortgage licensing system and registry, that
13 is provided by the employer of the mortgage loan originator or an
14 entity which is affiliated with the mortgage loan originator by an
15 agency contract, or any subsidiary or affiliate of such employer or
16 entity. Continuing education may be offered either in a classroom,
17 online, or by any other means approved by the nationwide mortgage
18 licensing system and registry.

19 NEW SECTION. **Sec. 25.** A new section is added to chapter 31.04 RCW
20 to read as follows:

21 The director shall establish a process whereby mortgage loan
22 originators may challenge information entered into the nationwide
23 mortgage licensing system and registry by the director.

24 NEW SECTION. **Sec. 26.** A new section is added to chapter 31.04 RCW
25 to read as follows:

26 (1) Except as otherwise provided in section 1512 of the S.A.F.E.
27 act, the requirements under any federal law or chapter 42.56 RCW
28 regarding the privacy or confidentiality of any information or material
29 provided to the nationwide mortgage licensing system and registry, and
30 any privilege arising under federal or state law, including the rules
31 of any federal or state court, with respect to that information or
32 material, continues to apply to the information or material after the
33 information or material has been disclosed to the nationwide mortgage
34 licensing system and registry. Information and material may be shared
35 with all state and federal regulatory officials with mortgage industry

1 oversight authority without the loss of privilege or the loss of
2 confidentiality protections provided by federal law or state law.

3 (2) For the purposes under subsection (1) of this section, the
4 director is authorized to enter agreements or sharing arrangements with
5 other governmental agencies, the conference of state bank supervisors,
6 the American association of residential mortgage regulators, or other
7 associations representing governmental agencies as established by rule,
8 regulation, or order of the director.

9 (3) Information or material that is subject to a privilege or
10 confidentiality under subsection (1) of this section is not subject to:

11 (a) Disclosure under any federal or state law governing the
12 disclosure to the public of information held by an officer or an agency
13 of the federal government or the respective state; or

14 (b) Subpoena or discovery, or admission into evidence, in any
15 private civil action or administrative process unless, with respect to
16 any privilege held by the nationwide mortgage licensing system and
17 registry with respect to that information or material, the person to
18 whom the information or material pertains waives, in whole or in part,
19 in the discretion of that person, that privilege.

20 (4) Chapter 42.56 RCW relating to the disclosure of confidential
21 supervisory information or any information or material described in
22 subsection (1) of this section that is inconsistent with subsection (1)
23 of this section is superseded by the requirements of this section.

24 (5) This section does not apply to the information or material
25 relating to the employment history of, and publicly adjudicated
26 disciplinary and enforcement actions against, mortgage loan originators
27 that is included in the nationwide mortgage licensing system and
28 registry for access by the public.

29 NEW SECTION. **Sec. 27.** A new section is added to chapter 31.04 RCW
30 to read as follows:

31 Each consumer loan company licensee who makes or brokers a loan
32 secured by real property shall submit to the nationwide mortgage
33 licensing system and registry reports of condition, which must be in
34 the form and must contain the information as the nationwide mortgage
35 licensing system and registry may require.

1 NEW SECTION. **Sec. 28.** A new section is added to chapter 31.04 RCW
2 to read as follows:

3 The director is authorized to regularly report violations of this
4 act, as well as enforcement actions and other relevant information, to
5 the nationwide mortgage licensing system and registry.

6 NEW SECTION. **Sec. 29.** A new section is added to chapter 31.04 RCW
7 to read as follows:

8 The unique identifier of any mortgage loan originator must be
9 clearly shown on all residential mortgage loan application forms,
10 solicitations, or advertisements, including business cards or web
11 sites, and any other documents as established by rule, regulation, or
12 order of the director. This section does not apply to consumer loan
13 licenses.

14 **Sec. 30.** RCW 31.04.165 and 2001 c 81 s 13 are each amended to read
15 as follows:

16 (1) The director has the power, and broad administrative
17 discretion, to administer and interpret this chapter to facilitate the
18 delivery of financial services to the citizens of this state by loan
19 companies and mortgage loan originators subject to this chapter. The
20 director shall adopt all rules necessary to administer this chapter and
21 to ensure complete and full disclosure by licensees of lending
22 transactions governed by this chapter.

23 (2) If it appears to the director that a licensee is conducting
24 business in an injurious manner or is violating any provision of this
25 chapter, the director may order or direct the discontinuance of any
26 such injurious or illegal practice.

27 (3) For purposes of this section, "conducting business in an
28 injurious manner" means conducting business in a manner that violates
29 any provision of this chapter, or that creates the reasonable
30 likelihood of a violation of any provision of this chapter.

31 (4) The director or designated persons, with or without prior
32 administrative action, may bring an action in superior court to enjoin
33 the acts or practices that constitute violations of this chapter and to
34 enforce compliance with this chapter or any rule or order made under
35 this chapter. Upon proper showing, injunctive relief or a temporary

1 restraining order shall be granted. The director shall not be required
2 to post a bond in any court proceedings.

3 NEW SECTION. **Sec. 31.** This act takes effect January 1, 2010.

4 NEW SECTION. **Sec. 32.** The director of financial institutions or
5 the director's designee may take the actions necessary to ensure this
6 act is implemented on January 1, 2010.

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