
HOUSE BILL 1874

State of Washington**68th Legislature****2024 Regular Session****By** Representatives Walen, Robertson, and Ryu

Prefiled 12/05/23.

1 AN ACT Relating to protecting consumers from predatory loans;
2 amending RCW 31.04.015, 31.04.025, 31.04.027, and 31.04.035; and
3 creating a new section.

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

5 NEW SECTION. **Sec. 1.** This act may be known and cited as the
6 predatory loan prevention act.

7 **Sec. 2.** RCW 31.04.015 and 2018 c 62 s 9 are each amended to read
8 as follows:

9 The definitions set forth in this section apply throughout this
10 chapter unless the context clearly requires a different meaning.

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

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

1 (3) "Applicant" means a person applying for a license under this
2 chapter.

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

12 (5) "Department" means the state department of financial
13 institutions.

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

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

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

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

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

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

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

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

7 (14) "Loan" means ~~((a sum of money lent at interest or for a fee
8 or other charge and includes both open-end and closed-end loan
9 transactions))~~ money or credit provided to a borrower in exchange for
10 the borrower's agreement to a certain set of terms including, but not
11 limited to, any finance charges, interest, or other charges,
12 conditions, or considerations. "Loan" includes open-end and closed-
13 end credit, and any transaction conducted via any medium whatsoever
14 including, but not limited to, paper, facsimile, internet, or
15 telephone. Any transaction that satisfies the definition of a "loan"
16 is subject to this chapter without regard to the lender's means of
17 collection, whether the lender has legal recourse against the
18 borrower in the event of nonrepayment, and whether the transaction
19 carries required charges or payments.

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

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

26 (17) "Mortgage broker" means the same as defined in RCW
27 19.146.010, except that for purposes of this chapter, a licensee or
28 person subject to this chapter cannot receive compensation as both a
29 consumer loan licensee making the loan and as a consumer loan
30 licensee acting as the mortgage broker in the same loan transaction.

31 (18) (a) "Mortgage loan originator" means an individual who for
32 compensation or gain (i) takes a residential mortgage loan
33 application, or (ii) offers or negotiates terms of a residential
34 mortgage loan. "Mortgage loan originator" also includes individuals
35 who hold themselves out to the public as able to perform any of these
36 activities. "Mortgage loan originator" does not include any
37 individual who performs purely administrative or clerical tasks; and
38 does not include a person or entity solely involved in extensions of
39 credit relating to timeshare plans, as that term is defined in
40 section 101(53D) of Title 11, United States Code. For the purposes of

1 this definition, administrative or clerical tasks means the receipt,
2 collection, and distribution of information common for the processing
3 of a loan in the mortgage industry and communication with a consumer
4 to obtain information necessary for the processing of a residential
5 mortgage loan.

6 (b) "Mortgage loan originator" also includes an individual who
7 for direct or indirect compensation or gain performs residential
8 mortgage loan modification services or holds himself or herself out
9 as being able to perform residential mortgage loan modification
10 services.

11 (c) "Mortgage loan originator" does not include a person or
12 entity that only performs real estate brokerage activities and is
13 licensed or registered in accordance with applicable state law,
14 unless the person or entity is compensated by a lender, a mortgage
15 broker, or other mortgage loan originator or by any agent of such a
16 lender, mortgage broker, or other mortgage loan originator. For the
17 purposes of chapter 120, Laws of 2009, the term "real estate
18 brokerage activity" means any activity that involves offering or
19 providing real estate brokerage services to the public, including:

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

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

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

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

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

33 (d) This subsection does not apply to employees of a housing
34 counseling agency approved by the United States department of housing
35 and urban development unless the employees of a housing counseling
36 agency are required under federal law to be individually licensed as
37 mortgage loan originators.

38 (19) "Nationwide mortgage licensing system" means a licensing
39 system developed and maintained by the conference of state bank
40 supervisors for licensing and registration.

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

3 (21) "Person" includes individuals, partnerships, associations,
4 limited liability companies, limited liability partnerships, trusts,
5 corporations, and all other legal entities.

6 (22) "Principal" means any person who controls, directly or
7 indirectly through one or more intermediaries, alone or in concert
8 with others, a ((~~ten~~)) 10 percent or greater interest in a
9 partnership; company; association or corporation; or a limited
10 liability company, and the owner of a sole proprietorship.

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

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

23 (25) "Residential mortgage loan modification" means a change in
24 one or more of a residential mortgage loan's terms or conditions.
25 Changes to a residential mortgage loan's terms or conditions include
26 but are not limited to forbearances; repayment plans; changes in
27 interest rates, loan terms, or loan types; capitalizations of
28 arrearages; or principal reductions.

29 (26) "Residential mortgage loan modification services" includes
30 negotiating, attempting to negotiate, arranging, attempting to
31 arrange, or otherwise offering to perform a residential mortgage loan
32 modification for compensation or gain. "Residential mortgage loan
33 modification services" also includes the collection of data for
34 submission to an entity performing mortgage loan modification
35 services.

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

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

1 (29) "Service or servicing a loan" means on behalf of the lender
2 or investor of a residential mortgage loan: (a) Collecting or
3 receiving payments on existing obligations due and owing to the
4 lender or investor, including payments of principal, interest, escrow
5 amounts, and other amounts due; (b) collecting fees due to the
6 servicer; (c) working with the borrower and the licensed lender or
7 servicer to collect data and make decisions necessary to modify
8 certain terms of those obligations either temporarily or permanently;
9 (d) otherwise finalizing collection through the foreclosure process;
10 or (e) servicing a reverse mortgage loan.

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

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

20 (a) On a nonresidential loan each payment is applied first to any
21 unpaid penalties, fees, or charges, then to accumulated interest, and
22 the remainder of the payment applied to the unpaid balance of the
23 principal until paid in full. In using such method, interest must not
24 be payable in advance nor compounded. The prohibition on compounding
25 interest does not apply to reverse mortgage loans made in accordance
26 with the Washington state reverse mortgage act. The director may
27 adopt by rule a more detailed explanation of the meaning and use of
28 this method.

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

31 (32) "Student education loan" means any loan solely for personal
32 use to finance postsecondary education and costs of attendance at an
33 educational institution. A student education loan includes a loan
34 made to refinance a student education loan. A student education loan
35 does not include a payment plan or accounts receivable at a higher
36 education institution as defined in RCW 28B.07.020(4) only during the
37 time of a student's enrollment in the higher education institution,
38 not to include a refinanced payment plan or accounts receivable, an
39 extension of credit under an open-end consumer credit plan, a reverse

1 mortgage transaction, a residential mortgage transaction, or any
2 other loan that is secured by real property or a dwelling.

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

7 (34) "Student education loan servicer" means any person, wherever
8 located, responsible for the servicing of any student education loan
9 to any student education loan borrower.

10 (35) "Student education loan servicing" or "service a student
11 education loan" means: (a) Receiving any scheduled periodic payments
12 from a student education loan borrower pursuant to the terms of a
13 student education loan; (b) applying the payments of principal and
14 interest and such other payments with respect to the amounts received
15 from a student education loan borrower, as may be required pursuant
16 to the terms of a student education loan; (c) working with the
17 student education loan borrower to collect data, or collecting data,
18 to make decisions to modify the loan; or (d) performing other
19 administrative services with respect to a student education loan
20 including collection activities. "Student education loan servicing"
21 does not include third-party student education loan modification
22 services.

23 (36) "Third-party residential mortgage loan modification
24 services" means residential mortgage loan modification services
25 offered or performed by any person other than the owner or servicer
26 of the loan.

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

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

1 (39) "Unique identifier" means a number or other identifier
2 assigned by protocols established by the nationwide mortgage
3 licensing system.

4 **Sec. 3.** RCW 31.04.025 and 2023 c 275 s 15 are each amended to
5 read as follows:

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

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

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

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

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

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

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

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

36 (c) ~~((Entities))~~ Any person conducting transactions under chapter
37 63.14 RCW (retail installment sales of goods and services), unless
38 credit is extended to purchase merchandise certificates, coupons,
39 open or closed loop stored value, or other similar items issued and

1 redeemable by a retail seller other than the retail seller extending
2 the credit;

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

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

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

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

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

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

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

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

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

36 (m) ((Entities)) Any person licensed under chapter 18.44 RCW that
37 process payments on seller-financed loans secured by liens on real or
38 personal property.

39 (((3))) (5) The director may, at his or her discretion, waive
40 applicability of the consumer loan company licensing provisions of

1 this chapter to other persons, not including individuals subject to
2 the S.A.F.E. act, making or servicing loans when the director
3 determines it necessary to facilitate commerce and protect consumers.

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

8 ((5)) (7) The director may adopt rules interpreting this
9 section.

10 **Sec. 4.** RCW 31.04.027 and 2021 c 15 s 1 are each amended to read
11 as follows:

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

15 (a) Directly or indirectly employ any scheme, device, or artifice
16 to defraud or mislead any borrower, to defraud or mislead any lender,
17 or to defraud or mislead any person;

18 (b) Directly or indirectly engage in any unfair or deceptive
19 practice toward any person;

20 (c) Directly or indirectly obtain property by fraud or
21 misrepresentation;

22 (d) Solicit or enter into a contract with a borrower that
23 provides in substance that the consumer loan company may earn a fee
24 or commission through the consumer loan company's best efforts to
25 obtain a loan even though no loan is actually obtained for the
26 borrower;

27 (e) Solicit, advertise, or enter into a contract for specific
28 interest rates, points, or other financing terms unless the terms are
29 actually available at the time of soliciting, advertising, or
30 contracting;

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

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

37 (h) Negligently make any false statement or knowingly and
38 willfully make any omission of material fact in connection with any

1 reports filed with the department by a licensee or in connection with
2 any investigation conducted by the department;

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

6 (j) Accept from any borrower at or near the time a loan is made
7 and in advance of any default an execution of, or induce any borrower
8 to execute, any instrument of conveyance, not including a mortgage or
9 deed of trust, to the lender of any ownership interest in the
10 borrower's primary dwelling that is the security for the borrower's
11 loan;

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

15 (l) Advertise any rate of interest without conspicuously
16 disclosing the annual percentage rate implied by that rate of
17 interest;

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

20 (n) Make or originate loans from any unlicensed location. It is
21 not a violation for a licensed mortgage loan originator to originate
22 loans from an unlicensed location if that location is the licensed
23 mortgage loan originator's residence and the licensed mortgage loan
24 originator and licensed sponsoring company comply with RCW 31.04.075;
25 or

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

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

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

34 (b) Misrepresent or omit any material information in connection
35 with the servicing of a student education loan including, but not
36 limited to, misrepresenting the amount, nature, conditions, or terms
37 of any fee or payment due or claimed to be due on a student education
38 loan, the terms and conditions of the loan agreement, the
39 availability of loan discharge or forgiveness options, the

1 availability and terms of and process for enrolling in income-driven
2 repayment, or the borrower's obligations under the loan;

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

7 (d) Fail to report to a consumer credit bureau at least annually
8 if the student education loan servicer regularly reports information
9 to a credit bureau;

10 (e) Refuse to communicate with an authorized representative of
11 the student education loan borrower who provides a written
12 authorization signed by the student education loan borrower. However,
13 the student education loan servicer may adopt procedures reasonably
14 related to verifying that the representative is in fact authorized to
15 act on behalf of the student education loan borrower;

16 (f) Refuse to communicate with the student education loan
17 borrower or an authorized representative of the student education
18 loan borrower;

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

25 (h) Fail to respond within ((fifteen)) 15 calendar days to
26 communications from the student loan advocate, or within such
27 shorter, reasonable time as the student loan advocate may request in
28 his or her communication; or

29 (i) Fail to provide a response within ((fifteen)) 15 calendar
30 days to a consumer complaint submitted to the servicer by the student
31 loan advocate. If necessary, a licensee may request additional time
32 up to a maximum of ((forty-five)) 45 calendar days, provided that
33 such request is accompanied by an explanation why such additional
34 time is reasonable and necessary.

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

37 **Sec. 5.** RCW 31.04.035 and 2018 c 62 s 12 are each amended to
38 read as follows:

1 (1) No person may ((make secured or unsecured loans of money or
2 things in action, or extend credit, or service or modify the terms or
3 conditions of residential mortgage loans, or service or modify
4 student education loans,)) engage in any activity subject to this
5 chapter without first obtaining and maintaining a license in
6 accordance with this chapter((, except those exempt under RCW
7 31.04.025 or not subject to licensure under RCW 31.04.420)).

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

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

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

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

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