

SB 6025 -- Redline

Substitute to Bill -- Protecting consumers from predatory loans.

Deletions ~~struck~~ · Insertions underlined

~~S 4485.1~~ S-3837.1 ~~SUBSTITUTE~~ SENATE BILL 6025 State of Washington 68th Legislature 2024 Regular Session
By ~~Senate Business, Financial Services, Gaming & Trade (originally sponsored by~~ Senators Stanford,
Dhingra, Frame, Hasegawa, Kuderer, Nguyen, Saldana, Trudeau, Valdez, and C.

~~Wilson) Wilson~~ READ Prefiled FIRST 01/05/24. ~~TIME 01/31/24.~~

Read first time 01/08/24.

Referred to Committee on Business, Financial Services, Gaming & Trade.

amending RCW 31.04.015, 31.04.025, 31.04.027, and 31.04.035;

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.

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1 SB 6025 (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.

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2 SB 6025 (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 p.

3 SB 6025 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.

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4 SB 6025 (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.

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5 SB 6025 (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 p.

6 SB 6025 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.

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7 SB 6025 (39) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system.

Sec.

3.

(1) Each loan made to a ~~resident((resident of of))~~ or a 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.

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, ~~p~~ or any electronic means regardless of whether the person has a physical location in the state.

~~1(3) SSB If 6025a or loan any exceeds electronic the means rate regardless permitted under this chapter, a person is a lender making a loan subject to the requirements of whether this chapter notwithstanding the fact that the person has purports to physical act location as an agent, service provider, or in the another state capacity for another person that is exempt from this act, if, among other things:~~

~~(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 chapter, if, among other things:~~

(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;

8 SB 6025 redeemable by a retail seller other than the retail seller extending the credit;

~~p~~-(h) ((Entities)) Any person making loans under chapter 43.185A RCW (housing trust fund);

~~2 SSB 6025 (h) ((Entities)) Any person making loans under chapter 43.185A RCW (housing trust fund);~~
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;~~property.
~~and(((3))) (n)(5) AnyThe persondirector thatmay, extendsat moneyhis or credither todiscretion, anotherwaive personapplicability on a nonrecourse basis in exchange for a contingent right to receive an amount of the potentialconsumer proceedsloan ofcompany anylicensing award,provisions judgment,of settlement,p_ verdict, or other resolution from a pending legal action.~~
This9 exemptionSB does6025 notthis applychapter to anyother personpersons, thatnot requiresincluding repaymentindividuals insubject theto event the personS.A.F.E. does not prevail in their civil proceeding.
~~((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. p_Sec.~~
~~34. SSB 6025 Sec.~~
~~3-~~
(h) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any ~~reportsp_ filed with the department by a licensee or in connection with any investigation conducted by the department;~~
10 SB 6025 reports filed with the department by a licensee or in connection with any investigation conducted by the department;
~~p_(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;~~
~~4 SSB 6025 (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;~~
(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 ~~availabilityp_ and terms of and process for enrolling in income-driven repayment, or the borrower's obligations under the loan;~~
11 SB 6025 availability and terms of and process for enrolling in income-driven repayment, or the borrower's obligations under the loan;
However, ~~p_ 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;~~
~~5 SSB 6025 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;~~
~~4-5.~~
~~(1)p. 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)).~~
12 SB 6025 (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)).
and ~~p_(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.~~
~~6 SSB 6025 (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.~~
~~713 SSBSE 6025~~