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**SENATE BILL 5210**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Liias, Fain, Darneille, Kuderer, Chase, Keiser, Pedersen, Palumbo, Saldaña, and Conway; by request of Attorney General

AN ACT Relating to establishing a student loan bill of rights; amending RCW 43.320.110, 31.04.027, 31.04.035, 31.04.093, 31.04.102, 31.04.145, 31.04.165, 31.04.277, and 31.04.310; reenacting and amending RCW 31.04.015; adding new sections to chapter 28B.77 RCW; adding new sections to chapter 31.04 RCW; creating new sections; and providing an effective date.

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

NEW SECTION. **Sec.**  A new section is added to chapter 28B.77 RCW to read as follows:

(1) The council shall designate a student education loan ombuds within the office to provide timely assistance to any student education loan borrower with any student education loan.

(2) The student education loan ombuds receives and reviews complaints from student education loan borrowers. Complaints regarding student education loan servicers licensed or subject to licensing under chapter 31.04 RCW must be referred to the department of financial institutions. The department of financial institutions investigates complaints received by the ombuds, and from the public who may also submit complaints directly to the department of financial institutions.

(3) The student education loan ombuds, in collaboration with the attorney general's office, receives, reviews, and refers to the attorney general's consumer protection division all other complaints from student education loan borrowers regarding student education loan servicers whose activities are not subject to licensure by chapter 31.04 RCW.

(4) The student education loan ombuds, the department of financial institutions, and the office of the attorney general shall confer annually regarding the student education loan servicer complaints, the proper referral processes for those complaints, and the reporting requirements of the ombuds under chapter 31.04 RCW and this section.

(5) The student education loan ombuds has the following duties:

(a) Compile and analyze data on student education loan borrower complaints received and referred to the department of financial institutions and the office of the attorney general;

(b) Assist student education loan borrowers in understanding rights and responsibilities under the terms of student education loans, including reviewing the complete student education loan history for any student education loan borrower who has provided written consent for the review;

(c) Provide information to the public, agencies, legislators, and others regarding the problems and concerns of student education loan borrowers and make recommendations for resolving those problems and concerns;

(d) Analyze and monitor the development and implementation of federal, state, and local laws, rules, regulations, and policies relating to student education loan borrowers and recommend any changes the student education loan ombuds deems necessary;

(e) Disseminate information concerning the availability of the student education loan ombuds to assist student education loan borrowers and potential student education loan borrowers, as well as institutions of higher education, student education loan servicers, and any other participant in student education loan lending, with any student education loan concerns; and

(f) Take any other actions necessary to fulfill the duties of the student education loan ombuds as provided in chapter 31.04 RCW and this section.

(6) By October 1, 2019, the student education loan ombuds shall establish and maintain a student education loan borrower education course that includes educational presentations and materials regarding issues surrounding student education loans. The course must include, but not be limited to, key loan terms, documentation requirements, monthly payment obligations, income-based repayment options, loan forgiveness, disclosure requirements, federal gainful employment regulations, and specific benefits and options for military service members and veterans.

(7) By December 31, 2019, the council shall submit a report to the appropriate committees of the legislature having jurisdiction over matters relating to financial institutions and higher education. The council shall report on: (a) The implementation of this section; (b) the overall effectiveness of the student education loan ombuds position; and (c) the types of complaints received regarding student education loan borrowing, student education loan repayments and servicing, and how these complaints are resolved.

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

(1) The director shall establish fees by rule sufficient to cover the costs of administering the department's program for student education loan servicers and the student achievement council's student education loan ombuds. These fees may include:

(a) An annual assessment specified in rule by the director paid by each licensee on or before the annual assessment due date;

(b) A late fee for late payment of the annual assessment as specified in rule by the director;

(c) Hourly investigation and examination fees to cover the costs of any investigation or examination of the books and records of a licensee or other person subject to this chapter;

(d) A nonrefundable application fee to cover the costs of processing license applications made to the director under this chapter;

(e) An initial license fee to cover the period from the date of licensure to the end of the calendar year in which the license is initially granted; and

(f) A transaction fee or set of transaction fees to cover the administrative costs associated with processing changes in control, changes of address, and other administrative changes as specified in rule by the director.

(2) The director shall ensure that when an examination or investigation, or any part of the examination or investigation, of any licensee applicant or person subject to licensing under this chapter requires travel and services outside this state by the director or designee, the licensee applicant or person subject to licensing under this chapter that is the subject of the examination or investigation shall pay the actual travel expenses incurred by the director or designee conducting the examination or investigation.

(3) All moneys, fees, and penalties collected for the department's program for student education loan servicing shall be deposited into the financial services regulation fund, except as provided in RCW 43.320.110.

**Sec.**  RCW 43.320.110 and 2015 3rd sp.s. c 4 s 960 are each amended to read as follows:

(1) There is created a local fund known as the "financial services regulation fund" which shall consist of all moneys received by the divisions of the department of financial institutions, except for the division of securities which shall deposit thirteen percent of all moneys received, except as provided in RCW 43.320.115, and which shall be used for the purchase of supplies and necessary equipment; the payment of salaries, wages, and utilities; the establishment of reserves; and other incidental costs required for the proper regulation of individuals and entities subject to regulation by the department. The state treasurer shall be the custodian of the fund. Disbursements from the fund shall be on authorization of the director of financial institutions or the director's designee. In order to maintain an effective expenditure and revenue control, the fund shall be subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditures and payment of obligations from the fund.

During the 2015-2017 fiscal biennium, the legislature may transfer from the financial services regulation fund to the state general fund such amounts as reflect the excess fund balance of the fund. During the 2015-2017 fiscal biennium, moneys from the financial services regulation fund may be appropriated for the family prosperity account program at the department of commerce and for the operations of the department of revenue.

(2)(a) Beginning in the 2019-2020 fiscal year, the state treasurer shall annually transfer from the fund to the student loan ombuds account created in section 4 of this act, the greater of one hundred seventy-five thousand dollars or twenty percent of the annual assessment derived from student education loan servicing.

(b) The department must provide information to the state treasurer regarding the amount of the annual assessment derived from student education loan servicing.

NEW SECTION. **Sec.**  A new section is added to chapter 28B.77 RCW to read as follows:

The student education loan ombuds account is created in the custody of the state treasurer. Expenditures from the account may be used only for the purpose of covering the costs of administering the student education loan ombuds account created in section 1 of this act. Only the executive director of the council or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditure.

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

(1) In addition to complying with any applicable federal program requirements, a student education loan servicer must comply with the following requirements:

(a) Any fee that is assessed by a servicer must be assessed within forty-five days of the date on which the fee was incurred and must be explained clearly and conspicuously in a statement mailed to the borrower at the borrower's last known address no more than thirty days after assessing the fee, or provided via email if the borrower has assented to receive electronic communications;

(b) All amounts received by a servicer on a student education loan at the address where the borrower has been instructed to make payments must be accepted and credited, or treated as credited, within one business day of the date received, provided that the borrower has provided sufficient information to credit the account. If a servicer uses the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date must be credited no later than the due date. If any payment is received and not credited, or treated as credited, the borrower must be notified of the disposition of the payment within ten business days by mail at the borrower's last known address. The notification must identify the reason the payment was not credited or treated as credited to the account, as well as any actions the borrower must take to make the student education loan current;

(c) The servicer must make reasonable attempts to comply with a borrower's request for information about the student education loan account and to respond to any dispute initiated by the borrower about the loan account. The servicer:

(i) Must maintain written or electronic records of each written request for information regarding a dispute or error involving the borrower's account until the student education loan is paid in full, sold, or otherwise satisfied; and

(ii) Must provide a written statement to the borrower within fifteen business days of receipt of a written request from the borrower. The borrower's request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and sufficient detail regarding the information sought by the borrower to permit the servicer to comply. At a minimum, the servicer's response to the borrower's request must include the following information:

(A) Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default;

(B) The current balance due on the student education loan, including the principal due, the amount of funds, if any, held in a suspense account, if any, and whether there are any shortages known to the servicer;

(C) The identity, address, and other relevant information about the current holder, owner, or assignee of the student education loan; and

(D) The telephone number and mailing address of a servicer representative with the information and authority to answer questions and resolve disputes; and

(d) Promptly correct any errors and refund any fees assessed to the borrower resulting from the servicer's error.

(2) In addition, a borrower may request more detailed information from a servicer, and the servicer must provide the information within fifteen business days of receipt of a written request from the borrower. The request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and provide sufficient detail to the servicer regarding information sought by the borrower. If requested by the borrower this statement must include:

(a) A copy of the original note, or if unavailable, an affidavit of lost note; and

(b) A statement that identifies and itemizes all fees and charges assessed under the loan transaction and provides a full payment history identifying in a clear and conspicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the borrower, and other activity on the student education loan including suspense account activity, if any. The period of the account history must cover at a minimum the two-year period prior to the date of the receipt of the request for information. If the servicer has not serviced the student education loan for the entire two-year time period the servicer must provide the information going back to the date on which the servicer began servicing the loan, and identify the previous servicer, if known. If the servicer claims that any delinquent or outstanding sums are owed on the loan prior to the two-year period or the period during which the servicer has serviced the student education loan, the servicer must provide an account history beginning with the month that the servicer claims any outstanding sums are owed on the student education loan up to the date of the request for the information. The borrower may request annually one statement free of charge.

(3) When acquiring servicing rights from another servicer, a transferring servicer must:

(a) Notify the student education loan borrowers no more than sixty days and no less than forty-five days before the effective date of the transfer of the students' loans to provide them with:

(i) The effective date of the transfer of servicing, and the date at which the receiving servicer will begin to accept payments relating to the loan, if different;

(ii) The name, address, and toll-free telephone number for both the transferring and receiving servicers' designated points of contact at which the borrower can obtain answers to inquiries;

(iii) A statement that the transfer of servicing does not affect any term or condition of the student education loan other than the entity servicing the loan;

(iv) Information about how to obtain a payment history from both the transferring or receiving servicer;

(v) A notification indicating whether an alternative repayment plan or loan consolidation application is pending; and

(vi) Information about how to submit a complaint to the United States department of education and the student education loan ombuds in the event of a servicing error; and

(b) Continue processing loan modification requests received by you or the transferring servicer during the transfer process.

(4) When transferring or selling the servicing of loans a transferring servicer must:

(a) Notify the student education loan borrowers no more than sixty days and no less than forty-five days before the effective date of the transfer of the students' loans to provide them with:

(i) The effective date of the transfer of servicing, and the date at which the transferring servicer will no longer accept payments relating to the loan, if different;

(ii) The name, address, and toll-free telephone number for the transferring and receiving servicers' designated points of contact at which the borrower can obtain answers to inquiries; and

(iii) A statement that the transfer of servicing does not affect any term or condition of the student education loan other than the entity servicing the loan; and

(b) Inform the receiving servicer if a loan modification request is pending.

(5) Licensees shall provide, free of charge on the licensee's web site, information or links to information regarding repayment and loan forgiveness options that may be available to borrowers, as well as the availability of the student education loan ombuds to provide assistance. This information or these links shall be provided via written correspondence or email at least once per calendar year.

(6) In addition to keeping books and records in compliance with this chapter and section 1 of this act, licensees shall collect, maintain, and report to the department specific information about the loans in the licensee's portfolio. Such information shall include, but not be limited by: Loan volume, default, refinance and modification information, loan type (subsidized, deferred, etc.) information, and collection practices.

(7) The director may adopt all rules necessary to implement this section. The director may, at his or her discretion, waive applicability of the provisions of this section when the director determines it necessary to facilitate commerce and protect consumers.

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

A student education loan servicer licensee must maintain liquidity, operating reserves, and a tangible net worth in accordance with generally accepted accounting principles as determined by the director. The director may adopt rules to implement this section.

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

(1) In addition to complying with federal and state law, including all requirements under chapter 18.28 RCW and this chapter, any person providing third-party student education loan modification services must:

(a) Provide a written disclosure summary in a form to be prescribed by the department;

(b) Not charge or receive any money or other valuable consideration prior to full and complete performance of the services the person has agreed to perform for the borrower;

(c) Not charge total fees in excess of usual and customary charges, or total fees that are not reasonable in light of the service provided; and

(d) Immediately inform the borrower in writing if the owner or servicer of the student education loan requires additional information or documentation from the borrower, or if it becomes apparent that a modification, refinancing, consolidation, or change in repayment plans on the student education loan is not possible.

(2) As a condition for providing third-party student education loan modification services, a person providing the services shall not:

(a) Require or encourage a borrower to sign a waiver of his or her legal defenses, counterclaims, and other legal rights against the person for future acts;

(b) Represent, expressly or by implication, that funds paid to the person providing third-party student education loan modification services will be applied to the borrower's student education loan balance;

(c) Require or encourage a borrower to waive his or her right to receive notice before the owner or servicer of the loan initiates collection proceedings;

(d) Require or encourage a borrower to agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan;

(e) Require or encourage a borrower to:

(i) Cease communication with the lender, investor, loan servicer, or United States department of education; or

(ii) Change his or her contact information to that of the third-party education loan servicer or any other third party;

(f) Misrepresent, expressly or by implication, the availability, performance, cost, or characteristics of any alternative to for-profit third-party student education loan modification services through which the consumer can obtain assistance with refinancing of, consolidation of, or change of repayment plans for a student education loan, including communicating directly with the servicer, applying through or communicating with the United States department of education, communicating with any other government agency, or using any nonprofit agency or program;

(g) Misrepresent, expressly or by implication, the amount of money or the percentage of the debt amount a student education loan borrower may save by engaging the person's third-party student education loan modification services;

(h) Misrepresent, expressly or by implication, the total cost to purchase the third-party student education loan modification services;

(i) Misrepresent, expressly or by implication, the terms, conditions, limitations, contingencies, or requirements to reapply or recertify eligibility for any refinancing of, consolidation of, or change of repayment plans for a student education loan;

(j) Misrepresent, expressly or by implication, any affiliation, connection, or relationship with the United States department of education or its contracted entities;

(k) Change a borrower's login information, personal identification number, or contact information on file with a servicer or the United States department of education, including without limitation telephone number, address, and email address.

(3) In any inconsistency between this chapter and chapter 18.28 RCW, this chapter shall control.

**Sec.**  RCW 31.04.015 and 2015 c 229 s 19 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

((~~(9)~~)) (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.

((~~(10)~~)) (11) "Insurance" means life insurance, disability insurance, property insurance, involuntary unemployment insurance, and such other insurance as may be authorized by the insurance commissioner.

((~~(11)~~)) (12) "License" means a single license issued under the authority of this chapter.

((~~(12)~~)) (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.

((~~(13)~~)) (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.

((~~(14)~~)) (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.

((~~(15)~~)) (16) "Making a loan" means advancing, offering to advance, or making a commitment to advance funds to a borrower for a loan.

((~~(16)~~)) (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.

((~~(17)~~)) (18)(a) "Mortgage loan originator" means an individual who for compensation or gain (i) takes a residential mortgage loan application, or (ii) offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" also includes individuals who hold themselves out to the public as able to perform any of these activities. "Mortgage loan originator" does not include any individual who performs purely administrative or clerical tasks; and does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code. For the purposes of this definition, administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing of a residential mortgage loan.

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

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

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

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

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

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

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

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

((~~(18)~~)) (19) "Nationwide mortgage licensing system" means a licensing system developed and maintained by the conference of state bank supervisors for licensing and registration.

((~~(19)~~)) (20) "Officer" means an official appointed by the company for the purpose of making business decisions or corporate decisions.

((~~(20)~~)) (21) "Person" includes individuals, partnerships, associations, limited liability companies, limited liability partnerships, trusts, corporations, and all other legal entities.

((~~(21)~~)) (22) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, alone or in concert with others, a ten percent or greater interest in a partnership; company; association or corporation; or a limited liability company, and the owner of a sole proprietorship.

((~~(22)~~)) (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.

((~~(23)~~)) (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.

((~~(24)~~)) (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.

((~~(25)~~)) (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.

((~~(26)~~)) (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.

((~~(27)~~)) (28) "Senior officer" means an officer of a licensee at the vice president level or above.

((~~(28)~~)) (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.

((~~(29)~~)) (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.

((~~(30)~~)) (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.

((~~(31)~~)) (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 an extension of credit under an open-end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling.

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

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

(35) "Student education loan servicing" or "service a student education loan" means: (a) Receiving any scheduled periodic payments from a student education loan borrower pursuant to the terms of a student education loan; (b) applying the payments of principal and interest and such other payments with respect to the amounts received from a student education loan borrower, as may be required pursuant to the terms of a student education loan; (c) working with the student education loan borrower to collect data, or collecting data, to make decisions to modify the loan; or (d) performing other administrative services with respect to a student education loan including collection activities.

(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.

((~~(32)~~)) (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.

((~~(33)~~)) (38) "Third-party student education loan modification services" means for compensation or other consideration working with the student education loan borrower or his or her representative to collect data or prepare or submit documents, or collecting data and preparing or submitting documents, to modify, refinance, or consolidate the loan, or change repayment plans.

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

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

(1) The following are subject to the student education loan servicer requirements in this chapter, but are exempt from having to obtain and maintain a license in accordance with this chapter:

(a) Trade, technical, vocational, or apprentice programs that teach skills related to a specific job, and postsecondary schools that service their own student education loans;

(b) Persons servicing five or fewer student education loans;

(c) The United States or any department or agency thereof, to the extent it is servicing student education loans that it originated; and

(d) Any state, county, city, or any department or agency thereof, but only to the extent it is servicing student education loans that it originated.

(2) The department may refer to the attorney general's consumer protection division complaints regarding entities subject to this section.

**Sec.**  RCW 31.04.027 and 2015 c 229 s 21 are each amended to read as follows:

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

((~~(1)~~)) (a) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any borrower, to defraud or mislead any lender, or to defraud or mislead any person;

((~~(2)~~)) (b) Directly or indirectly engage in any unfair or deceptive practice toward any person;

((~~(3)~~)) (c) Directly or indirectly obtain property by fraud or misrepresentation;

((~~(4)~~)) (d) Solicit or enter into a contract with a borrower that provides in substance that the consumer loan company may earn a fee or commission through the consumer loan company's best efforts to obtain a loan even though no loan is actually obtained for the borrower;

((~~(5)~~)) (e) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

((~~(6)~~)) (f) Fail to make disclosures to loan applicants as required by RCW 31.04.102 and any other applicable state or federal law;

((~~(7)~~)) (g) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;

((~~(8)~~)) (h) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed with the department by a licensee or in connection with any investigation conducted by the department;

((~~(9)~~)) (i) Make any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

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

((~~(11)~~)) (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;

((~~(12)~~)) (l) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by that rate of interest;

((~~(13)~~)) (m) Violate any applicable state or federal law relating to the activities governed by this chapter; or

((~~(14)~~)) (n) Make or originate loans from any unlicensed location.

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

(a) Conduct licensable activity from any unlicensed location;

(b) Misrepresent or omit any material information in connection with the servicing of a student education loan including, but not limited to, misrepresenting the amount, nature, 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, or the borrower's obligations under the loan;

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

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

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

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

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

**Sec.**  RCW 31.04.035 and 2013 c 29 s 4 are each amended to read as follows:

(1) No person may make secured or unsecured loans of money or things in action, or extend credit, or service or modify the terms or conditions of residential mortgage loans, or service or modify student education loans, 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 section 9 of this act.

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

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

(b) Fees or interest charged in the making of a nonresidential loan must be refunded to the borrower.

**Sec.**  RCW 31.04.093 and 2015 c 229 s 24 are each amended to read as follows:

(1) The director must enforce all laws and rules relating to the licensing and regulation of licensees and persons subject to this chapter.

(2) The director may deny applications for licenses for:

(a) Failure of the applicant to demonstrate within its application for a license that it meets the requirements for licensing in RCW 31.04.045 and 31.04.055;

(b) Violation of an order issued by the director under this chapter or another chapter administered by the director, including but not limited to cease and desist orders and temporary cease and desist orders;

(c) Revocation or suspension of a license to conduct lending ((~~or~~)), residential mortgage loan servicing, student education loan servicing, or to provide settlement services associated with lending ((~~or~~)), residential mortgage loan servicing, or student education loan servicing, by this state, another state, or by the federal government within five years of the date of submittal of a complete application for a license; or

(d) Filing an incomplete application when that incomplete application has been filed with the department for sixty or more days, provided that the director has given notice to the licensee that the application is incomplete, informed the applicant why the application is incomplete, and allowed at least twenty days for the applicant to complete the application.

(3) The director may condition, suspend, or revoke a license issued under this chapter if the director finds that:

(a) The licensee has failed to pay any fee due the state of Washington, has failed to maintain in effect the bond or permitted substitute required under this chapter, or has failed to comply with any specific order or demand of the director lawfully made and directed to the licensee in accordance with this chapter;

(b) The licensee, either knowingly or without the exercise of due care, has violated any provision of this chapter or any rule adopted under this chapter;

(c) A fact or condition exists that, if it had existed at the time of the original application for the license, clearly would have allowed the director to deny the application for the original license; or

(d) The licensee failed to comply with any directive, order, or subpoena issued by the director under this chapter.

The director may condition, revoke, or suspend only the particular license with respect to which grounds for conditioning, revocation, or suspension may occur or exist or the director may condition, revoke, or suspend all of the licenses issued to the licensee.

(4) The director may impose fines of up to one hundred dollars per day, per violation, upon the licensee, its employee or loan originator, or other person subject to this chapter for:

(a) Any violation of this chapter; or

(b) Failure to comply with any directive, order, or subpoena issued by the director under this chapter.

(5) The director may issue an order directing the licensee, its employee or loan originator, or other person subject to this chapter to:

(a) Cease and desist from conducting business in a manner that is injurious to the public or violates any provision of this chapter;

(b) Take such affirmative action as is necessary to comply with this chapter;

(c) Make a refund or restitution to a borrower or other person who is damaged as a result of a violation of this chapter;

(d) Refund all fees received through any violation of this chapter.

(6) The director may issue an order removing from office or prohibiting from participation in the affairs of any licensee, or both, any officer, principal, employee or mortgage loan originator, or any person subject to this chapter for:

(a) False statements or omission of material information from an application for a license that, if known, would have allowed the director to deny the original application for a license;

(b) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony;

(c) Suspension or revocation of a license to engage in lending ((~~or~~)), residential mortgage loan servicing, student education loan servicing, or perform a settlement service related to lending or residential mortgage loan servicing, in this state or another state;

(d) Failure to comply with any order or subpoena issued under this chapter;

(e) A violation of RCW 31.04.027, 31.04.102, 31.04.155, or 31.04.221; or

(f) Failure to obtain a license for activity that requires a license.

(7) Except to the extent prohibited by another statute, the director may engage in informal settlement of complaints or enforcement actions including, but not limited to, payment to the department for purposes of financial literacy and education programs authorized under RCW 43.320.150. If any person subject to this chapter makes a payment to the department under this section, the person may not advertise such payment.

(8) Whenever the director determines that the public is likely to be substantially injured by delay in issuing a cease and desist order, the director may immediately issue a temporary cease and desist order. The order may direct the licensee to discontinue any violation of this chapter, to take such affirmative action as is necessary to comply with this chapter, and may include a summary suspension of the licensee's license and may order the licensee to immediately cease the conduct of business under this chapter. The order becomes effective at the time specified in the order. Every temporary cease and desist order must include a provision that a hearing will be held upon request to determine whether the order will become permanent. Such hearing must be held within fourteen days of receipt of a request for a hearing unless otherwise specified in chapter 34.05 RCW.

(9) A licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the licensee's civil or criminal liability, if any, for acts committed before the surrender, including any administrative action initiated by the director to suspend or revoke a license, impose fines, compel the payment of restitution to borrowers or other persons, or exercise any other authority under this chapter. The statute of limitations on actions not subject to RCW 4.16.160 that are brought under this chapter by the director is five years.

(10) The revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and a borrower.

(11) Every license issued under this chapter remains in force and effect until it has been surrendered, revoked, or suspended in accordance with this chapter. However, the director may on his or her own initiative reinstate suspended licenses or issue new licenses to a licensee whose license or licenses have been revoked if the director finds that the licensee meets all the requirements of this chapter.

(12) A license issued under this chapter expires upon the licensee's failure to comply with the annual assessment requirements in RCW 31.04.085, and the rules. The department must provide notice of the expiration to the address of record provided by the licensee. On the 15th day after the department provides notice, if the assessment remains unpaid, the license expires. The licensee must receive notice prior to expiration and have the opportunity to stop the expiration as set forth in rule.

**Sec.**  RCW 31.04.102 and 2015 c 229 s 27 are each amended to read as follows:

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

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

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

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

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

**Sec.**  RCW 31.04.145 and 2015 c 229 s 29 are each amended to read as follows:

(1) For the purpose of discovering violations of this chapter or securing information lawfully required under this chapter, the director may at any time, either personally or by designees, investigate or examine the loans and business and, wherever located, the books, accounts, records, papers, documents, files, and other information used in the business of every licensee and of every person ((~~who is engaged in the business making or assisting in the making of loans at interest rates authorized by~~)) subject to this chapter, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter. The director or designated representative:

(a) Must have free access to the employees, offices, and places of business, books, accounts, papers, documents, other information, records, files, safes, and vaults of all such persons during normal business hours;

(b) May require the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or the subject matter of any investigation, examination, or hearing and may require such person to produce books, accounts, papers, records, files, and any other information the director or designated persons deem relevant to the inquiry;

(c) May require by directive, subpoena, or any other lawful means the production of original books, accounts, papers, records, files, and other information; may require that such original books, accounts, papers, records, files, and other information be copied; or may make copies of such original books, accounts, papers, records, files, or other information;

(d) May issue a subpoena or subpoena duces tecum requiring attendance by any person identified in this section or compelling production of any books, accounts, papers, records, files, or other documents or information identified in this section.

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

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

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

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

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

(c) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to chapter 120, Laws of 2009;

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

(e) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to chapter 120, Laws of 2009 in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the director; or

(f) Assess the licensee, individual, or person subject to chapter 120, Laws of 2009 the cost of the services in (a) of this subsection.

**Sec.**  RCW 31.04.165 and 2010 c 35 s 7 are each amended to read as follows:

(1) The director has the power, and broad administrative discretion, to administer and interpret this chapter to facilitate the delivery of financial services to the citizens of this state by ((~~consumer loan companies, residential mortgage loan servicers, and mortgage loan originators~~)) persons subject to this chapter. The director shall adopt all rules necessary to administer this chapter and to ensure complete and full disclosure by licensees of lending transactions governed by this chapter.

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

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

(4) The director or designated persons, with or without prior administrative action, may bring an action in superior court to enjoin the acts or practices that constitute violations of this chapter and to enforce compliance with this chapter or any rule or order made under this chapter. Upon proper showing, injunctive relief or a temporary restraining order shall be granted. The director shall not be required to post a bond in any court proceedings.

**Sec.**  RCW 31.04.277 and 2015 c 229 s 34 are each amended to read as follows:

Each consumer loan company licensee ((~~who makes, services, or brokers a loan secured by real property~~)) must submit call reports through the nationwide mortgage licensing system ((~~and registry~~)) in a form and containing the information prescribed by the director or as deemed necessary by the nationwide mortgage licensing system ((~~and registry~~)).

**Sec.**  RCW 31.04.310 and 2015 c 229 s 26 are each amended to read as follows:

Upon application by the director and upon a showing that the interests of borrowers or creditors so requires, the superior court may appoint a receiver to take over, operate, or liquidate any residential mortgage or student education loan servicer.

NEW SECTION. **Sec.**  (1) The Washington state institute for public policy shall conduct a study on the impact and cost-effectiveness of establishing a student loan authority to refinance existing federal and private undergraduate and graduate student loans from the proceeds of tax-exempt bonds. In conducting the study, the institute shall:

(a) Review guidance on the subject issued by the United States treasury;

(b) Review the structure of state-operated loan refinance programs in other states;

(c) Evaluate the effectiveness of borrower requirements, such as a credit score or a loan cosigner; and

(d) Compare any potential savings and costs to undergraduate and graduate borrowers of a loan refinanced by the state as compared to a similar federal direct loan and a private loan, issued one, five, and ten years ago.

(2) The Washington state institute for public policy shall submit a report on its findings to the higher education committees of the legislature by December 31, 2017.

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

The requirements of this act do not apply to any person doing business under, and as permitted by, any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan or building and loan associations, or credit unions.

NEW SECTION. **Sec.**  The director of financial institutions or the director's designee, the attorney general or the attorney general's designee, and the student achievement council may take the actions necessary to ensure this act is implemented on January 1, 2018.

NEW SECTION. **Sec.**  This act may be known and cited as the Washington student education loan bill of rights.

NEW SECTION. **Sec.**  This act takes effect January 1, 2018.

**--- END ---**