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**SENATE BILL 5077**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senators Dozier, Mullet, Brown, Das, Warnick, and Wilson, C.; by request of Department of Financial Institutions

Prefiled 01/05/21. Read first time 01/11/21. Referred to Committee on Business, Financial Services & Trade.

1 AN ACT Relating to providing authority to licensed companies to  
2 allow licensed mortgage loan originators to work from their  
3 residences without the company licensing the residence as a branch  
4 office of the company; and amending RCW 31.04.027, 31.04.075,  
5 19.146.0201, and 19.146.265.

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

7 **Sec. 1.** RCW 31.04.027 and 2018 c 62 s 11 are each amended to  
8 read as follows:

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

12 (a) Directly or indirectly employ any scheme, device, or artifice  
13 to defraud or mislead any borrower, to defraud or mislead any lender,  
14 or to defraud or mislead any person;

15 (b) Directly or indirectly engage in any unfair or deceptive  
16 practice toward any person;

17 (c) Directly or indirectly obtain property by fraud or  
18 misrepresentation;

19 (d) Solicit or enter into a contract with a borrower that  
20 provides in substance that the consumer loan company may earn a fee  
21 or commission through the consumer loan company's best efforts to

1 obtain a loan even though no loan is actually obtained for the  
2 borrower;

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

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

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

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

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

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

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

29 (l) Advertise any rate of interest without conspicuously  
30 disclosing the annual percentage rate implied by that rate of  
31 interest;

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

34 (n) Make or originate loans from any unlicensed location. It is  
35 not a violation for a licensed mortgage loan originator to originate  
36 loans from an unlicensed location if that location is the licensed  
37 mortgage loan originator's residence and the licensed mortgage loan  
38 originator and licensed sponsoring company comply with RCW 31.04.075.

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

- 1 (a) Conduct licensable activity from any unlicensed location;
- 2 (b) Misrepresent or omit any material information in connection  
3 with the servicing of a student education loan including, but not  
4 limited to, misrepresenting the amount, nature, conditions, or terms  
5 of any fee or payment due or claimed to be due on a student education  
6 loan, the terms and conditions of the loan agreement, the  
7 availability of loan discharge or forgiveness options, the  
8 availability and terms of and process for enrolling in income-driven  
9 repayment, or the borrower's obligations under the loan;
- 10 (c) Provide inaccurate information to a credit bureau, thereby  
11 harming a student education loan borrower's creditworthiness,  
12 including failing to report both the favorable and unfavorable  
13 payment history of the student education loan;
- 14 (d) Fail to report to a consumer credit bureau at least annually  
15 if the student education loan servicer regularly reports information  
16 to a credit bureau;
- 17 (e) Refuse to communicate with an authorized representative of  
18 the student education loan borrower who provides a written  
19 authorization signed by the student education loan borrower. However,  
20 the student education loan servicer may adopt procedures reasonably  
21 related to verifying that the representative is in fact authorized to  
22 act on behalf of the student education loan borrower;
- 23 (f) Refuse to communicate with the student education loan  
24 borrower or an authorized representative of the student education  
25 loan borrower;
- 26 (g) Apply payments made by a borrower to the outstanding balance  
27 of a student education loan, or allocate a payment across a group of  
28 student education loans, in a manner that does not conform with the  
29 borrower's stated intent. However, this subsection (2)(g) does not  
30 require application of a student education loan in a manner contrary  
31 to the express terms of the promissory note;
- 32 (h) Fail to respond within fifteen calendar days to  
33 communications from the student loan advocate, or within such  
34 shorter, reasonable time as the student loan advocate may request in  
35 his or her communication; or
- 36 (i) Fail to provide a response within fifteen calendar days to a  
37 consumer complaint submitted to the servicer by the student loan  
38 advocate. If necessary, a licensee may request additional time up to  
39 a maximum of forty-five calendar days, provided that such request is

1 accompanied by an explanation why such additional time is reasonable  
2 and necessary.

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

5 **Sec. 2.** RCW 31.04.075 and 2015 c 229 s 23 are each amended to  
6 read as follows:

7 (1) The licensee may not maintain more than one place of business  
8 under the same license (~~, but the~~) unless:

9 (a) The director (~~may issue~~) authorizes more than one license  
10 to the same licensee upon approval of an application by the licensee  
11 in a form and manner established by the director; or

12 (b) The place of business is a licensed mortgage loan  
13 originator's residence and the licensed mortgage loan originator and  
14 licensed sponsoring company comply with state and federal information  
15 security requirements and all other requirements set forth in rule  
16 for mortgage loan originators working from their residences as  
17 provided in this chapter and in rule, consistent with the purposes of  
18 this section.

19 (2) Whenever a licensee wishes to change the place of business to  
20 a street address other than that reported in the nationwide mortgage  
21 licensing system and registry, the licensee must give prior written  
22 notice to the director, pay the fee, and obtain the director's  
23 approval.

24 **Sec. 3.** RCW 19.146.0201 and 2015 c 229 s 7 are each amended to  
25 read as follows:

26 It is a violation of this chapter for loan originators, mortgage  
27 brokers, officers, directors, employees, independent contractors, or  
28 any other person subject to this chapter to:

29 (1) Directly or indirectly employ any scheme, device, or artifice  
30 to defraud or mislead borrowers or lenders or to defraud any person;

31 (2) Directly or indirectly engage in any unfair or deceptive  
32 practice toward any person;

33 (3) Directly or indirectly obtain property by fraud or  
34 misrepresentation;

35 (4) Solicit or enter into a contract with a borrower that  
36 provides in substance that the mortgage broker may earn a fee or  
37 commission through the mortgage broker's "best efforts" to obtain a  
38 loan even though no loan is actually obtained for the borrower;

1 (5) Solicit, advertise, or enter into a contract for specific  
2 interest rates, points, or other financing terms unless the terms are  
3 actually available at the time of soliciting, advertising, or  
4 contracting from a person exempt from licensing under RCW  
5 19.146.020(1)(f) or a lender with whom the mortgage broker maintains  
6 a written correspondent or loan broker agreement under RCW  
7 19.146.040;

8 (6) Fail to make disclosures to loan applicants and  
9 noninstitutional investors as required by RCW 19.146.030 and any  
10 other applicable state or federal law;

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

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

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

22 (10) Advertise any rate of interest without conspicuously  
23 disclosing the annual percentage rate implied by such rate of  
24 interest;

25 (11) Fail to comply with state and federal laws applicable to the  
26 activities governed by this chapter;

27 (12) Fail to pay third-party providers no later than thirty days  
28 after the recording of the loan closing documents or ninety days  
29 after completion of the third-party service, whichever comes first,  
30 unless otherwise agreed or unless the third-party service provider  
31 has been notified in writing that a bona fide dispute exists  
32 regarding the performance or quality of the third-party service;

33 (13) Collect, charge, attempt to collect or charge or use or  
34 propose any agreement purporting to collect or charge any fee  
35 prohibited by RCW 19.146.030 or 19.146.070;

36 (14)(a) Except when complying with (b) and (c) of this  
37 subsection, act as a loan originator in any transaction (i) in which  
38 the loan originator acts or has acted as a real estate broker or  
39 salesperson or (ii) in which another person doing business under the

1 same licensed real estate broker acts or has acted as a real estate  
2 broker or salesperson;

3 (b) Prior to providing mortgage services to the borrower, a loan  
4 originator, in addition to other disclosures required by this chapter  
5 and other laws, must provide to the borrower the following written  
6 disclosure:

7 THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES  
8 HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON  
9 REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO  
10 YOU. I AM ALSO A LOAN ORIGINATOR, AND WOULD LIKE TO PROVIDE  
11 MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO  
12 PURCHASE THE PROPERTY.

13 YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN  
14 CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON  
15 SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND TO SELECT  
16 ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING; and

17 (c) A real estate broker or salesperson licensed under chapter  
18 18.85 RCW who also acts as a mortgage broker must carry on such  
19 mortgage broker business activities and must maintain such person's  
20 mortgage broker business records separate and apart from the real  
21 estate broker activities conducted pursuant to chapter 18.85 RCW.  
22 Such activities are separate and apart even if they are conducted at  
23 an office location with a common entrance and mailing address, so  
24 long as each business is clearly identified by a sign visible to the  
25 public, each business is physically separated within the office  
26 facility, and no deception of the public as to the separate  
27 identities of the broker business firms results. This subsection  
28 (14) (c) does not require a real estate broker or salesperson licensed  
29 under chapter 18.85 RCW who also acts as a mortgage broker to  
30 maintain a physical separation within the office facility for the  
31 conduct of its real estate and mortgage broker activities where the  
32 director determines that maintaining such physical separation would  
33 constitute an undue financial hardship upon the mortgage broker and  
34 is unnecessary for the protection of the public;

35 (15) Fail to comply with any provision of RCW 19.146.030 through  
36 19.146.080 or any rule adopted under those sections;

37 (16) Originate loans from any unlicensed location. It is not a  
38 violation for a licensed mortgage loan originator to originate loans  
39 from an unlicensed location if that location is the licensed mortgage

1 loan originator's residence and the licensed mortgage loan originator  
2 and licensed sponsoring company comply with RCW 19.146.265;

3 (17) Solicit or accept from any borrower at or near the time a  
4 loan application is taken, and in advance of any foreclosure of the  
5 borrower's existing residential mortgage loan or loans, any  
6 instrument of conveyance of any interest in the borrower's primary  
7 dwelling that is the subject of the residential mortgage loan or  
8 loans; or

9 (18) Make a residential mortgage loan unless the loan is table  
10 funded.

11 **Sec. 4.** RCW 19.146.265 and 2015 c 229 s 16 are each amended to  
12 read as follows:

13 A (~~licensed mortgage broker may apply to the~~) licensee may not  
14 maintain more than one place of business under the same license  
15 unless:

16 (1) The director (~~for authority~~) approves the licensed mortgage  
17 broker's application, made in a form and manner established in rule,  
18 to establish one or more branch offices under the same or different  
19 name as the main office (~~upon the payment of a fee as prescribed by~~  
20 ~~the director by rule~~). The applicant must be in good standing with  
21 the department, as defined in rule by the director, and the director  
22 must promptly issue a license for each of the branch offices showing  
23 the location of the main office and the particular branch; or

24 (2) The place of business is a licensed mortgage loan  
25 originator's residence and the licensed mortgage loan originator and  
26 licensed sponsoring company comply with state and federal information  
27 security requirements and other requirements as provided in this  
28 chapter and in rule, consistent with the purposes of this section.

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