**5774-S2 AMS ZEIG S2674.1 - NOT FOR FLOOR USE**

**2SSB 5774** - S AMD **172**

By Senator Zeiger

**NOT ADOPTED 03/06/2019**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  The legislature finds that a postsecondary credential is essential to Washingtonians' ability to attain jobs with good salaries and advancement opportunities, and that meeting the increasing demand for credentialed workers to fill jobs in Washington is essential to the future health of the state's economy. The legislature finds that the amount of debt that individual Washingtonians incur in pursuit of postsecondary credentials represents a growing burden on individuals and on the state's economy at large that negatively impacts individuals' ability to obtain a postsecondary credential, as well as their ability to save for retirement, purchase a home, and start a family. The legislature finds that giving Washingtonians new tools to address this burden is necessary to help make higher education more accessible and affordable.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Department" means the department of financial institutions.

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

(4) "Financial institution" means commercial banks and alien banks subject to regulation under Title 30A RCW, savings banks subject to regulation under Title 32 RCW, savings associations subject to regulation under Title 33 RCW, and credit unions subject to regulation under chapter 31.12 RCW.

(5) "Income" means salary, wages, interest, dividends, and other earnings which are reportable for federal income tax purposes.

(6) "Income share agreement" means an agreement between an individual and any other person under which the individual commits to pay a specified percentage of the individual's future income, for a specified period of time, in exchange for payments to or on behalf of the individual for postsecondary education, workforce development, or similar purposes.

(7) "Income share agreement originator" means a person who for compensation or gain takes an income share agreement application or offers or negotiates the terms of an income share agreement or a person who purchases an existing income share agreement. An income share agreement originator does not include any individual who performs purely administrative or clerical tasks.

(8) "Individual" 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 entering into, an income share agreement regardless of whether that person actually enters into an agreement.

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

(10) "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.

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

(12) "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; corporation; or a limited liability company, and the owner of a sole proprietorship.

NEW SECTION. **Sec.**  An income share agreement must:

(1) Specify the percentage of future income which the individual is obligated to pay to the person with whom the individual has entered into an income share agreement;

(2) Specify the maximum duration of the individual's obligation under the income share agreement, which may not exceed three hundred sixty months, unless the duration has been extended pursuant to section 5 of this act;

(3) Specify that at least the first ten thousand dollars of an individual's income is exempt when determining the individual's income for a given year; the amount of the exemption must be adjusted annually to reflect changes in the consumer price index for all urban consumers published by the bureau of labor statistics of the department of labor for the most recent twelve-month period for which such data are available, and notice must be provided annually to the individual regarding the updated income threshold for exemption;

(4) Specify the terms and conditions by which the individual may extinguish his or her obligations under the income share agreement before the end of the payment period specified in the agreement, based upon the remaining term of the payment period;

(5) Make the following disclosures regarding the income share agreement in clear and simple language:

(a) The definition of income to be used for the purposes of calculating the individual's obligation;

(b) The percentage of income the individual is committed to paying under the agreement and the number of payments required per year;

(c) The duration of the individual's obligations under the agreement, including any circumstances under which the duration of the contract may be extended;

(d) That the agreement is not a debt instrument;

(e) That the amount the individual is required to pay under the agreement may be more or less than the payments made to or on behalf of the individual;

(f) That the agreement represents the obligation by the individual to pay a specific percentage of his or her income and does not give the contract holder any rights regarding the individual's actions regarding educational or employment pursuits; and

(g) Whether the obligations of the individual under the agreement may be extinguished by accelerating payments and any terms under which payment may be accelerated.

NEW SECTION. **Sec.**  (1) No licensee may enter into an income share agreement if the total percentage of an individual's future income obligated under the agreement and any other income share agreement entered into by the individual exceeds fifteen percent of his or her future income.

(2) Any income share agreement entered into in violation of subsection (1) of this section is unenforceable against the individual.

NEW SECTION. **Sec.**  The duration of the individual's obligations under the income share agreement may be extended for a period of time equal to the time that the individual's annual income is less than the exempt amount established in section 3(3) of this act.

NEW SECTION. **Sec.**  (1) In the event of the sale of an income share agreement by the originator of the agreement, the buyer of the agreement is subject to the requirements of this chapter.

(2) The buyer of an income share agreement must be a licensee or have a servicer for the income share agreement who is a licensee.

NEW SECTION. **Sec.**  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) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any individual, to defraud or mislead any lender, or to defraud or mislead any person;

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

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

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

(5) Make, in any manner, any false or deceptive statement or representation with regard to the financing terms or conditions for an income share agreement or engage in bait and switch advertising;

(6) 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;

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

(8) Make or originate income share agreements from any unlicensed location;

(9) Fail to comply with the terms of the income share agreement; or

(10) Fail to comply with advertising regulations set by rule.

NEW SECTION. **Sec.**  (1) No person may originate income share agreements without first obtaining and maintaining a license in accordance with this chapter.

(2) If a transaction violates subsection (1) of this section, any fees or interest charged in the making of an income share agreement must be refunded to the individual.

(3) Each licensed income share agreement originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

NEW SECTION. **Sec.**  (1) Each application for a license under this chapter must be in writing in a form prescribed by the director. The application must contain at least the following information:

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

(b) If the applicant is a partnership, limited liability company, or association, the name of every member;

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

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

(e) Other information as the director may require by rule.

(2) As part of or in connection with an application for any license under this section, or periodically upon license renewal, each officer, director, and owner applicant must furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, or any governmental agency or entity authorized to receive this information for a state and national criminal history background check, personal history, experience, business record, purposes, and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, or periodically upon license renewal, the director is authorized to receive criminal history record information that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30A, 32, and 33 RCW.

(3) At the time of filing an application for a license under this chapter, each applicant must pay to the director or through the nationwide mortgage licensing system and registry an investigation fee and the license fee in an amount determined by rule of the director to be sufficient to cover the director's costs in administering this chapter.

(4) Each applicant must file and maintain a surety bond, approved by the director, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, whose liability as such surety must not exceed in the aggregate the penal sum of the bond. The penal sum of the bond must be a minimum of thirty thousand dollars and based on the annual dollar amount of income share agreements originated. The bond must run to the state of Washington as obligee for the use and benefit of the state and of any person or persons who may have a cause of action against the obligor under this chapter. The bond must be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all the rules adopted under this chapter. The bond must pay to the state and any person or persons having a cause of action against the obligor all moneys that may become due and owing to the state and those persons under and by virtue of this chapter. The bond must be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation is effective forty-five days after the notice is received by the director.

NEW SECTION. **Sec.**  (1) The director must issue a license to the applicant to originate income share agreements in accordance with this chapter at the location specified in the application if, after investigation, the director finds that:

(a) The applicant has paid all required fees;

(b) The applicant has submitted a complete application in compliance with section 9 of this act;

(c) Neither the applicant nor its officers or principals have had a license issued under this section, in this state or another state, revoked or suspended within the last five years of the date of filing of the application;

(d) Neither the applicant nor any of its officers or principals have been convicted of a gross misdemeanor involving dishonesty or financial misconduct or a felony or a violation of the banking laws of this state or of the United States within seven years of the filing of an application; and

(e) The financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter.

(2) If the director does not find the conditions of subsection (1) of this section have been met, the director may not issue the license. The director must notify the applicant of the denial and return to the applicant the bond posted and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application. The director must approve or deny every application for license under this chapter within ninety days from the filing of a complete application with the fees and the approved bond.

NEW SECTION. **Sec.**  The licensee may not maintain more than one place of business under the same license, but the director may issue more than one license to the same licensee upon application by the licensee in a form and manner established by the director.

Whenever a licensee wishes to change the place of business to a street address other than that reported in the nationwide mortgage licensing system and registry, the licensee must give prior written notice to the director, pay the fee, and obtain the director's approval. The license is not transferable or assignable.

NEW SECTION. **Sec.**  A licensee must, for each license held by any person, on or before the first day of each March, pay to the director an annual assessment as determined by rule by the director. The licensee must be responsible for payment of the annual assessment for the previous calendar year if the licensee had a license for any time during the preceding calendar year, regardless of whether they surrendered their license during the calendar year or whether their license was suspended or revoked. At the same time the licensee must file with the director the required bond or otherwise demonstrate compliance with section 8 of this act.

NEW SECTION. **Sec.**  (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 sections 8 and 9 of this act;

(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 originate income share agreements 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 income share agreement 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 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 an individual or other person who is damaged as a result of a violation of this chapter; or

(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 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 the origination of income share agreements in this state or another state;

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

(e) A violation of this section or section 6 or 16 of this act; 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 the 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 shall become effective at the time specified in the order. Every temporary cease and desist order shall include a provision that a hearing will be held upon request to determine whether the order will become permanent. The 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 individuals 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 an individual.

(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 section 12 of this act and the rules. The department must provide notice of the expiration to the address of record provided by the licensee. On the fifteenth 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.

NEW SECTION. **Sec.**  No licensee may advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever, any statement or representation with regard to the terms or conditions for income share agreements that is false, misleading, or deceptive.

NEW SECTION. **Sec.**  (1) The director or authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

(a) State that an order is sought under this section;

(b) Adequately specify the documents, records, evidence, or testimony; and

(c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3).

NEW SECTION. **Sec.**  (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 of making or assisting in the making of income share agreements authorized by 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, 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 income share agreements 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 shall 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 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 the cost of the services in (a) of this subsection.

NEW SECTION. **Sec.**  (1)(a) The licensee must keep and use in the business such books, accounts, records, papers, documents, files, and other information as will enable the director to determine whether the licensee is complying with this chapter and with the rules adopted by the director under this chapter.

(b) The director must have free access to such books, accounts, records, papers, documents, files, and other information wherever located.

(c) Every licensee must preserve the books, accounts, records, papers, documents, files, and other information relevant to an income share agreement for at least three years after the last payment is made pursuant to such agreement.

(d) No licensee or person subject to examination or investigation under this chapter may withhold, abstract, remove, mutilate, destroy, or secrete any books, accounts, records, papers, documents, files, or other information.

(2) Each licensee must, on or before the first day of March of each year, file a report with the director giving such relevant information as the director may reasonably require concerning the business and operations of each licensed place of business conducted during the preceding calendar year. The report must be made under oath and must be in the form prescribed by the director, who must make and publish annually an analysis and recapitulation of the reports. Every licensee that fails to file a report that is required to be filed by this chapter within the time required under this chapter is subject to a penalty of fifty dollars per day for each day's delay. The attorney general may bring a civil action in the name of the state for recovery of any such penalty.

NEW SECTION. **Sec.**  (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 income share agreement originators subject to this chapter. The director must 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 must not be required to post a bond in any court proceedings.

NEW SECTION. **Sec.**  (1) A person who violates, or knowingly aids or abets in the violation of any provision of this chapter, for which no penalty has been prescribed, and a person who fails to perform any act that it is his or her duty to perform under this chapter and for which failure no penalty has been prescribed, is guilty of a gross misdemeanor.

(2) No provision imposing civil penalties or criminal liability under this chapter or rule adopted under this chapter applies to an act taken or omission made in good faith in conformity with a written notice, interpretation, or examination report of the director or his or her agent.

NEW SECTION. **Sec.**  The proceedings for denying license applications, issuing cease and desist orders, suspending or revoking licenses, and imposing civil penalties or other remedies under this chapter, and any review or appeal of such action, is governed by the administrative procedure act, chapter 34.05 RCW.

NEW SECTION. **Sec.**  (1) The director or designated persons may, at his or her discretion, take any action as provided for in this chapter to enforce this chapter. If the person subject to this action does not appear in person or by counsel at the time and place designated for any administrative hearing that may be held on the action, then the person is deemed to consent to the action. If the person subject to the action consents, or if after hearing the director finds by a preponderance of the evidence that any grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter.

(2) The director may recover the state's costs and expenses for prosecuting violations of this chapter including staff time spent preparing for and attending administrative hearings and reasonable attorneys' fees unless, after a hearing, the director determines no violation occurred.

NEW SECTION. **Sec.**  Any income share agreement originated by an unlicensed person as prohibited under this chapter is unenforceable in Washington.

NEW SECTION. **Sec.**  The legislature finds that the practices governed by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive.

**Sec.**  RCW 31.04.025 and 2015 c 229 s 20 are each amended to read as follows:

(1) Each loan made to a resident of this state by a licensee, or persons subject to this chapter, is subject to the authority and restrictions of this chapter.

(2) This chapter does not apply to the following:

(a) 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;

(b) Entities making loans under chapter 19.60 RCW (pawnbroking);

(c) Entities 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;

(d) Entities making loans under chapter 31.45 RCW (check cashers and sellers);

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

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

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

(h) Entities making loans under chapter 43.185 RCW (housing trust fund);

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

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

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

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

(m) Entities licensed under chapter 18.44 RCW that process payments on seller-financed loans secured by liens on real or personal property; and

(n) Entities licensed under chapter 31.--- RCW (the new chapter created in section 27 of this act) that originate income share agreements.

(3) 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. act, making or servicing loans when the director determines it necessary to facilitate commerce and protect consumers.

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

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

**Sec.**  RCW 19.52.080 and 1981 c 78 s 2 are each amended to read as follows:

Profit and nonprofit corporations, Massachusetts trusts, associations, trusts, general partnerships, joint ventures, limited partnerships, and governments and governmental subdivisions, agencies, or instrumentalities may not plead the defense of usury nor maintain any action thereon or therefor, and persons may not plead the defense of usury nor maintain any action thereon or therefor if the transaction was primarily for agricultural, commercial, investment, or business purposes((~~: PROVIDED, HOWEVER, That~~)). Except for income share agreements, as defined in section 2 of this act, this section shall not apply to a consumer transaction of any amount.

Consumer transactions, as used in this section, shall mean transactions primarily for personal, family, or household purposes.

**Sec.**  RCW 21.20.320 and 2006 c 220 s 1 are each amended to read as follows:

The following transactions are exempt from RCW 21.20.040 through 21.20.300 and 21.20.327 except as expressly provided:

(1) Any isolated transaction, or sales not involving a public offering, whether effected through a broker-dealer or not; or any transaction effected in accordance with any rule by the director establishing a nonpublic offering exemption pursuant to this subsection where registration is not necessary or appropriate in the public interest or for the protection of investors.

(2) Any nonissuer transaction by a registered salesperson of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940 pursuant to any rule adopted by the director.

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the director may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period.

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit. A bond or other evidence of indebtedness is not offered and sold as a unit if the transaction involves:

(a) A partial interest in one or more bonds or other evidences of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels; or

(b) One of multiple bonds or other evidences of indebtedness secured by one or more real or chattel mortgages or deeds of trust, or agreements for the sale of real estate or chattels, sold to more than one purchaser as part of a single plan of financing; or

(c) A security including an investment contract other than the bond or other evidence of indebtedness.

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter.

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(9) Any transaction effected in accordance with the terms and conditions of any rule adopted by the director if:

(a) The aggregate offering amount does not exceed five million dollars; and

(b) The director finds that registration is not necessary in the public interest and for the protection of investors.

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber.

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (b) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days.

(12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act.

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock.

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets.

(15) The offer or sale by a registered broker-dealer, or a person exempted from the registration requirements pursuant to RCW 21.20.040, acting either as principal or agent, of securities previously sold and distributed to the public: PROVIDED, That:

(a) Such securities are sold at prices reasonably related to the current market price thereof at the time of sale, and, if such broker-dealer is acting as agent, the commission collected by such broker-dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics;

(b) Such securities do not constitute the whole or a part of an unsold allotment to or subscription or participation by such broker-dealer as an underwriter of such securities or as a participant in the distribution of such securities by the issuer, by an underwriter or by a person or group of persons in substantial control of the issuer or of the outstanding securities of the class being distributed; and

(c) The security has been lawfully sold and distributed in this state or any other state of the United States under this or any act regulating the sale of such securities.

(16) Any transaction by a mutual or cooperative association meeting the requirements of (a) and (b) of this subsection:

(a) The transaction:

(i) Does not involve advertising or public solicitation; or

(ii) Involves advertising or public solicitation, and:

(A) The association first files a notice of claim of exemption on a form prescribed by the director specifying the terms of the offer and the director does not by order deny the exemption within the next ten full business days; or

(B) The association is an employee cooperative and identifies itself as an employee cooperative in advertising or public solicitation.

(b) The transaction involves an instrument or interest, that:

(i)(A) Qualifies its holder to be a member or patron of the association;

(B) Represents a contribution of capital to the association by a person who is or intends to become a member or patron of the association;

(C) Represents a patronage dividend or other patronage allocation; or

(D) Represents the terms or conditions by which a member or patron purchases, sells, or markets products, commodities, or services from, to, or through the association; and

(ii) Is nontransferable except in the case of death, operation of law, bona fide transfer for security purposes only to the association, a bank, or other financial institution, intrafamily transfer, transfer to an existing member or person who will become a member, or transfer by gift to any person organized and operated as a nonprofit organization as defined in RCW 84.36.800(4) that also possesses a current tax exempt status under the laws of the United States, and, in the case of an instrument, so states conspicuously on its face.

(17) Any income share agreement entered into pursuant to chapter 31.--- RCW (the new chapter created in section 27 of this act). However, any solicitation, offer, or sale of interest in an income share agreement made pursuant to chapter 31.--- RCW (the new chapter created in section 27 of this act) is not exempt.

(18) Any transaction effected in accordance with any rule adopted by the director establishing a limited offering exemption which furthers objectives of compatibility with federal exemptions and uniformity among the states, provided that in adopting any such rule the director may require that no commission or other remuneration be paid or given to any person, directly or indirectly, for effecting sales unless the person is registered under this chapter as a broker-dealer or salesperson.

NEW SECTION. **Sec.**  Sections 1 through 23 of this act constitute a new chapter in Title 31 RCW.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Council" means the Washington student achievement council.

(2) "Financial institution" has the same meaning as in RCW 7.88.010.

(3) "Interest rate buy down incentive" means the use of state funds to enable qualified borrowers to receive below market rate interest rates for the purposes of this chapter.

(4) "Loan loss reserve coverage" means partial risk coverage to financial institutions to cover losses on qualified loans according to the terms set forth in the contract between the agency and the financial institution for the purposes of this chapter.

(5) "Program" means the Washington student loan refinancing program.

(6) "Qualified borrower" means an individual meeting all of the following requirements:

(a) Resident of the state of Washington;

(b) Completion of an associate's, bachelor's, graduate, or professional degree and the receipt of a certificate, diploma, or degree from a trade, career, or technical school; and

(c) Other criteria as deemed appropriate by the council.

(7) "Qualified loan" means a loan or a portion of a loan made by a financial institution to a qualified borrower to refinance an existing student loan under the program. Only a loan determined by the financial institution to be an educational loan that is nondischargeable in bankruptcy as set forth in 11 U.S.C. Sec. 523 as it existed on January 14, 2019, shall be a qualified loan eligible for refinancing. A qualified loan made under the program shall:

(a) Carry a contractual interest rate at least one-quarter of one percentage point lower than the loan being refinanced, and may be made with the interest rates, fees, and other terms and conditions agreed upon by the financial institution and the qualified borrower; and

(b) Specify that an individual's obligation under a qualified loan must be discharged if the individual dies, based on the following:

(i) An original or certified copy of the individual's death certificate;

(ii) An accurate and complete photocopy of the original or certified copy of the individual's death certificate;

(iii) An accurate and complete original or certified copy of the individual's death certificate that is scanned and submitted electronically or sent by facsimile transmission; or

(iv) Verification of the individual's death through an authoritative federal or state electronic database approved for use by the council.

(8) This section expires July 1, 2029.

NEW SECTION. **Sec.**  (1) Subject to amounts appropriated specifically for this purpose, the Washington student loan refinancing program is created.

(2) The program shall be administered by the council. To execute the program the council shall contract with up to five financial institutions. The financial institutions, in consultation with the council, may leverage the interest rate buy down incentive or the loan loss reserve coverage, or some combination thereof, to refinance existing student loans. In administering the program, the council may:

(a) Impose reasonable limits on the terms of qualified loans;

(b) Impose reasonable limits on the terms of qualified borrowers;

(c) Impose reasonable limits on the use of state funds for the marketing on qualified loan products by financial institutions;

(d) Establish minimum reporting requirements for financial institutions participating in the program;

(e) Establish minimum required disclosures by financial institutions for qualified loans. At a minimum, the disclosures must notify qualified borrowers of the:

(i) Loss of borrower protections including income contingent repayment and public service loan forgiveness options if the qualified borrower is refinancing a federal student loan under this chapter; and

(ii) Estimated total cost of the qualified loan, including accrued interest under this chapter;

(f) Appoint and use advisory committees and the department of financial institutions as needed to provide program guidance and direction;

(g) Formulate and adopt all other policies and rules necessary for the efficient administration of the program;

(h) Make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise and discharge of its powers and duties under this chapter; and

(i) Perform all acts necessary and proper to carry out the duties and responsibilities of the program under this chapter.

(3) On a biennial basis beginning July 1, 2020, the council must report to the appropriate committees of the legislature the:

(a) Number of financial institutions currently under contract through the program;

(b) Number of qualified student loans successfully refinanced under the program;

(c) Qualified borrower requirements established by the council and the financial institutions;

(d) Demographic information for borrowers that includes gender, race or ethnicity, income level, and geography; and

(e) Estimated total savings by qualified borrowers with qualified loans as defined by the difference between what the student would have paid under the existing loan and what the student would pay when given the option to refinance.

(4) This section expires July 1, 2029.

NEW SECTION. **Sec.**  Sections 28 and 29 of this act constitute a new chapter in Title 28B RCW.

NEW SECTION. **Sec.**  This act may be known and cited as the student loan relief and reform act."

**2SSB 5774** - S AMD **172**

By Senator Zeiger

**NOT ADOPTED 03/06/2019**

On page 1, line 1 of the title, after "relief;" strike the remainder of the title and insert "amending RCW 31.04.025, 19.52.080, and 21.20.320; adding a new chapter to Title 31 RCW; adding a new chapter to Title 28B RCW; creating a new section; providing expiration dates; and prescribing penalties."

EFFECT: Removes the creation of an income share agreement (ISA) pilot and creates a regulatory structure for ISAs.

(1) ISA terms and disclosures:

(a) The originators of these Agreements (Originators) are regulated by the Department of Financial Institutions (DFI).

(b) An individual enters into an Agreement with an Originator.

(c) The terms that must be included in an ISA are specified.

(d) The disclosures that must be included in an ISA are specified.

(2) Licensing of ISA originators:

(a) No person may originate an Agreement without first obtaining and maintaining a license.

(b) Each licensed Originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry (NMLSR).

(c) The applicant for a license must submit an application, any license fee, and an investigation fee as determined by rule of the Director of the DFI (Director) to be sufficient to cover the Director's costs in administering the provisions under the act.

(d) Each applicant must file and maintain a surety bond.

(3) Regulatory structure for ISAs:

(a) The regulatory structure and licensing requirements for Agreements parallel the structure and requirements under the Consumer Loan Act, which authorizes the DFI to regulate consumer loan companies who conduct business in Washington.

(b) The Director of DFI may deny, condition, revoke, or suspend licenses for failure to meet the requirements of the act and impose fines up to $100 per day per violation.

(c) The Agreements entered into under this act are exempt from the usury limitations under chapter 19.52 RCW.