

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2255

Chapter 17, Laws of 2012

62nd Legislature
2012 Regular Session

NONDEPOSITORY INSTITUTIONS--ENFORCEMENT AUTHORITIES

EFFECTIVE DATE: 06/07/12

Passed by the House February 1, 2012
Yeas 96 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate February 24, 2012
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved March 7, 2012, 2:15 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2255** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 7, 2012

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2255

Passed Legislature - 2012 Regular Session

State of Washington

62nd Legislature

2012 Regular Session

By House Business & Financial Services (originally sponsored by Representatives Kirby and Bailey; by request of Department of Financial Institutions)

READ FIRST TIME 01/26/12.

1 AN ACT Relating to making technical corrections, modernizing
2 statutes, and streamlining enforcement authorities of nondepository
3 institutions regulated by the department of financial institutions;
4 amending RCW 31.04.027, 31.04.065, 31.04.093, 31.04.145, 31.04.224,
5 31.45.010, 31.45.070, 31.45.105, 31.45.110, 19.146.200, and 19.144.020;
6 reenacting and amending RCW 31.04.025; adding a new section to chapter
7 31.45 RCW; adding a new section to chapter 19.146 RCW; adding new
8 sections to chapter 18.44 RCW; and adding new sections to chapter
9 19.230 RCW.

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

11 **Sec. 1.** RCW 31.04.025 and 2011 c 191 s 1 and are each reenacted
12 and amended to read as follows:

13 (1) Each loan made to a resident of this state by a licensee, or
14 persons subject to this chapter, is subject to the authority and
15 restrictions of this chapter, unless such loan is made under the
16 authority of chapter 63.14 RCW.

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

18 (a) Any person doing business under, and as permitted by, any law

1 of this state or of the United States relating to banks, savings banks,
2 trust companies, savings and loan or building and loan associations, or
3 credit unions;

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

5 (c) Entities (~~making loans~~) conducting transactions under chapter
6 63.14 RCW (retail installment sales of goods and services), unless the
7 goods being sold in a retail installment sale consist of open loop
8 prepaid access (prepaid access as defined in 31 C.F.R. Part
9 1010.100(w) and not closed loop prepaid access as defined in 31 C.F.R.
10 Part 1010.100(kkk));

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

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

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

19 (g) Entities making loans under chapter 43.185 RCW (housing trust
20 fund);

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

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

31 (j) Entities making loans which are not residential mortgage loans
32 under a credit card plan; and

33 (k) Individuals employed by a licensed residential loan servicing
34 company, unless so required by federal law or regulation.

35 (3) The director may, at his or her discretion, waive applicability
36 of the consumer loan company licensing provisions of this chapter to
37 other persons, not including individuals subject to the S.A.F.E. act,

1 making or servicing loans when the director determines it necessary to
2 facilitate commerce and protect consumers. The director may adopt
3 rules interpreting this section.

4 **Sec. 2.** RCW 31.04.027 and 2011 c 191 s 2 are each amended to read
5 as follows:

6 It is a violation of this chapter for a licensee, its officers,
7 directors, employees, or independent contractors, or any other person
8 subject to this chapter to:

9 (1) Directly or indirectly employ any scheme, device, or artifice
10 to defraud or mislead any borrower, to defraud or mislead any lender,
11 or to defraud or mislead any person;

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

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

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

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

24 (6) Fail to make disclosures to loan applicants as required by RCW
25 31.04.102 and any other applicable state or federal law;

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

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

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

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

7 (11) Obtain at the time of closing a release of future damages for
8 usury or other damages or penalties provided by law or a waiver of the
9 provisions of this chapter; ~~((or))~~

10 (12) Advertise any rate of interest without conspicuously
11 disclosing the annual percentage rate implied by that rate of interest
12 or otherwise fail to comply with any requirement of the truth in
13 lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Sec. 226,
14 the real estate settlement procedures act, 12 U.S.C. Sec. 2601 and
15 regulation X, 24 C.F.R. Sec. 3500, or the equal credit opportunity act,
16 15 U.S.C. Sec. 1691 and regulation B, Sec. 202.9, 202.11, and 202.12,
17 or any other applicable state or federal statutes~~((~~as now or~~~~
18 ~~hereafter amended, in any advertising of residential mortgage loans or~~
19 ~~any other consumer loan company activity))~~ or regulations; or

20 (13) Make loans from any unlicensed location.

21 **Sec. 3.** RCW 31.04.065 and 1991 c 208 s 7 are each amended to read
22 as follows:

23 The license shall state the address at which the business is to be
24 conducted and shall state fully the name of the licensee, and if the
25 licensee is a copartnership or association, the names of its members,
26 and if a corporation, the date and place of its incorporation. ~~((The~~
27 ~~licensee shall conspicuously post the license in the place of business~~
28 ~~of the licensee.))~~ The license is not transferable or assignable.

29 **Sec. 4.** RCW 31.04.093 and 2010 c 35 s 6 are each amended to read
30 as follows:

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

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

35 (a) Failure of the applicant to demonstrate within its application

1 for a license that it meets the requirements for licensing in RCW
2 31.04.045 and 31.04.055;

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

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

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

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

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

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

28 (c) A fact or condition exists that, if it had existed at the time
29 of the original application for the license, clearly would have allowed
30 the director to deny the application for the original license. The
31 director may revoke or suspend only the particular license with respect
32 to which grounds for revocation or suspension may occur or exist unless
33 the director finds that the grounds for revocation or suspension are of
34 general application to all offices or to more than one office operated
35 by the licensee, in which case, the director may revoke or suspend all
36 of the licenses issued to the licensee.

37 (4) The director may impose fines of up to one hundred dollars per

1 day upon the licensee, its employee or loan originator, or other person
2 subject to this chapter for:

- 3 (a) Any violation of this chapter; or
- 4 (b) Failure to comply with any order or subpoena issued by the
5 director under this chapter.

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

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

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

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

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

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

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

24 (c) Suspension or revocation of a license to engage in lending or
25 residential mortgage loan servicing, or perform a settlement service
26 related to lending or residential mortgage loan servicing, in this
27 state or another state;

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

30 (e) A violation of RCW 31.04.027, 31.04.102, 31.04.155, or
31 31.04.221;

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

1 ~~((7))~~ (8) Whenever the director determines that the public is
2 likely to be substantially injured by delay in issuing a cease and
3 desist order, the director may immediately issue a temporary cease and
4 desist order. The order may direct the licensee to discontinue any
5 violation of this chapter, to take such affirmative action as is
6 necessary to comply with this chapter, and may include a summary
7 suspension of the licensee's license and may order the licensee to
8 immediately cease the conduct of business under this chapter. The
9 order shall become effective at the time specified in the order. Every
10 temporary cease and desist order shall include a provision that a
11 hearing will be held upon request to determine whether the order will
12 become permanent. Such hearing shall be held within fourteen days of
13 receipt of a request for a hearing unless otherwise specified in
14 chapter 34.05 RCW.

15 ~~((8))~~ (9) A licensee may surrender a license by delivering to the
16 director written notice of surrender, but the surrender does not affect
17 the licensee's civil or criminal liability, if any, for acts committed
18 before the surrender, including any administrative action initiated by
19 the director to suspend or revoke a license, impose fines, compel the
20 payment of restitution to borrowers or other persons, or exercise any
21 other authority under this chapter.

22 ~~((9))~~ (10) The revocation, suspension, or surrender of a license
23 does not impair or affect the obligation of a preexisting lawful
24 contract between the licensee and a borrower.

25 ~~((10))~~ (11) Every license issued under this chapter remains in
26 force and effect until it has been surrendered, revoked, or suspended
27 in accordance with this chapter. However, the director may on his or
28 her own initiative reinstate suspended licenses or issue new licenses
29 to a licensee whose license or licenses have been revoked if the
30 director finds that the licensee meets all the requirements of this
31 chapter.

32 **Sec. 5.** RCW 31.04.145 and 2009 c 120 s 8 are each amended to read
33 as follows:

34 (1) For the purpose of discovering violations of this chapter or
35 securing information lawfully required under this chapter, the director
36 may at any time, either personally or by designees, investigate or
37 examine the loans and business and, wherever located, the books,

1 accounts, records, papers, documents, files, and other information used
2 in the business of every licensee and of every person who is engaged in
3 the business making or assisting in the making of loans at interest
4 rates authorized by this chapter, whether the person acts or claims to
5 act as principal or agent, or under or without the authority of this
6 chapter. (~~For these purposes,~~) The director or designated
7 representative(~~s~~):

8 (a) Shall have free access to the offices and places of business,
9 books, accounts, papers, documents, other information, records, files,
10 safes, and vaults of all such persons(~~.—The director or persons~~
11 ~~designated by the director~~) during normal business hours;

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

18 (c) May require the production of original books, accounts, papers,
19 records, files, and other information; may require that such original
20 books, accounts, papers, records, files, and other information be
21 copied; or may make copies (~~himself or herself or by designee~~) of
22 such original books, accounts, papers, records, files, or other
23 information(~~.—If a licensee or person does not attend and testify, or~~
24 ~~does not produce the requested books, accounts, papers, records, files,~~
25 ~~or other information, then the director or designated persons~~);

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

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

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

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

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

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

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

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

14 (e) Accept audit reports made by an independent certified public
15 accountant for the licensee, individual, or person subject to chapter
16 120, Laws of 2009 in the course of that part of the examination
17 covering the same general subject matter as the audit and may
18 incorporate the audit report in the report of the examination, report
19 of investigation, or other writing of the director; or

20 (f) Assess the licensee, individual, or person subject to chapter
21 120, Laws of 2009 the cost of the services in (a) of this subsection.

22 **Sec. 6.** RCW 31.04.224 and 2009 c 120 s 11 are each amended to read
23 as follows:

24 The following are exempt from licensing as mortgage loan
25 originators under this chapter:

26 (1) Registered mortgage loan originators, or any individual
27 required to be registered;

28 (2) A licensed attorney who negotiates the terms of a residential
29 mortgage loan on behalf of a client as an ancillary matter to the
30 attorney's representation of the client, unless the attorney is
31 compensated by a lender, a mortgage broker, or other mortgage loan
32 originator or by any agent of a lender, mortgage broker, or other
33 mortgage loan originator; (~~or~~)

34 (3) Any individual who offers or negotiates terms of a residential
35 mortgage loan with or on behalf of an immediate family member; or

36 (4) Any individual who offers or negotiates terms of a residential

1 mortgage loan secured by a dwelling that served as the individual's
2 residence.

3 **Sec. 7.** RCW 31.45.010 and 2009 c 510 s 2 are each amended to read
4 as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

7 (1) "Applicant" means a person that files an application for a
8 license under this chapter, including the applicant's sole proprietor,
9 owners, directors, officers, partners, members, and controlling
10 persons.

11 (2) "Borrower" means a natural person who receives a small loan.

12 (3) "Business day" means any day that the licensee is open for
13 business in at least one physical location.

14 (4) "Check" means the same as defined in RCW 62A.3-104(f) and, for
15 purposes of conducting the business of making small loans, includes
16 other electronic forms of payment, including stored value cards,
17 internet transfers, and automated clearing house transactions.

18 (5) "Check casher" means an individual, partnership, unincorporated
19 association, or corporation that, for compensation, engages, in whole
20 or in part, in the business of cashing checks, drafts, money orders, or
21 other commercial paper serving the same purpose.

22 (6) "Check seller" means an individual, partnership, unincorporated
23 association, or corporation that, for compensation, engages, in whole
24 or in part, in the business of or selling checks, drafts, money orders,
25 or other commercial paper serving the same purpose.

26 (7) "Collateral" means the same as defined in chapter 62A.9A RCW.

27 (8) "Controlling person" means a person owning or controlling ten
28 percent or more of the total outstanding shares of the applicant or
29 licensee, if the applicant or licensee is a corporation, and a member
30 who owns ten percent or more of a limited liability company or limited
31 liability partnership.

32 (9) "Default" means the borrower's failure to repay the small loan
33 in compliance with the terms contained in the small loan agreement or
34 note or failure to pay any installment plan payment on an installment
35 plan within ten days after the date upon which the installment was
36 scheduled to be paid.

37 (10) "Director" means the director of financial institutions.

- 1 (11) "Financial institution" means a commercial bank, savings bank,
2 savings and loan association, or credit union.
- 3 (12) "Installment plan" is a contract between a licensee and
4 borrower that provides that the loaned amount will be repaid in
5 substantially equal installments scheduled on or after a borrower's pay
6 dates and no less than fourteen days apart.
- 7 (13) "Licensee" means a check casher or seller licensed by the
8 director to engage in business in accordance with this chapter. (~~For~~
9 ~~purposes of the enforcement powers of this chapter, including the power~~
10 ~~to issue cease and desist orders under RCW 31.45.110,~~) "Licensee" also
11 means a check casher or seller, whether located within or outside of
12 this state, who fails to obtain the license or small loan endorsement
13 required by this chapter.
- 14 (14) "Loaned amount" means the outstanding principal balance and
15 any fees authorized under RCW 31.45.073 that have not been paid by the
16 borrower.
- 17 (15) "Origination date" means the date upon which the borrower and
18 the licensee initiate a small loan transaction.
- 19 (16) "Outstanding principal balance" of a small loan means any of
20 the principal amount that has not been paid by the borrower.
- 21 (17) "Paid" means that moment in time when the licensee deposits
22 the borrower's check or accepts cash for the full amount owing on a
23 valid small loan. If the borrower's check is returned by the
24 borrower's bank for (~~insufficient funds~~) any reason, the licensee
25 shall not consider the loan paid.
- 26 (18) "Person" means an individual, partnership, association,
27 limited liability company, limited liability partnership, trust,
28 corporation, and any other legal entity.
- 29 (19) "Principal" means the loan proceeds advanced for the benefit
30 of the borrower in a small loan, excluding any fee or interest charge.
- 31 (20) "Rescission" means annulling the loan contract and, with
32 respect to the small loan contract, returning the borrower and the
33 licensee to their financial condition prior to the origination date of
34 the loan.
- 35 (21) "Small loan" means a loan of up to the maximum amount and for
36 a period of time up to the maximum term specified in RCW 31.45.073.
- 37 (22) "Termination date" means the date upon which payment for the

1 small loan transaction is due or paid to the licensee, whichever occurs
2 first.

3 (23) "Total of payments" means the principal amount of the small
4 loan plus all fees or interest charged on the loan.

5 (24) "Trade secret" means the same as defined in RCW 19.108.010.

6 NEW SECTION. **Sec. 8.** A new section is added to chapter 31.45 RCW
7 to read as follows:

8 Applicants may be required to make application through a multistate
9 licensing system as prescribed by the director. Existing licensees may
10 be required to transition onto a multistate licensing system as
11 prescribed by the director.

12 **Sec. 9.** RCW 31.45.070 and 2003 c 86 s 7 are each amended to read
13 as follows:

14 (1) No licensee may engage in a loan business ~~((or))~~; the
15 negotiation of loans; or the discounting of notes, bills of exchange,
16 checks, or other evidences of debt ~~((or))~~ in the same premises where a
17 check cashing or selling business is conducted, unless the licensee:

18 (a) Is conducting the activities of pawnbroker as defined in RCW
19 19.60.010;

20 (b) Is a properly licensed consumer loan company under chapter
21 31.04 RCW;

22 (c) Is conducting other lending activity permitted in the state of
23 Washington; or

24 (d) Has a small loan endorsement issued under this chapter.

25 (2) Except as otherwise permitted in this chapter, no licensee may
26 at any time cash or advance any moneys on a postdated check or draft.
27 However, a licensee may cash a check payable on the first banking day
28 following the date of cashing if:

29 (a) The check is drawn by the United States, the state of
30 Washington, or any political subdivision of the state, or by any
31 department or agency of the state or its subdivisions; or

32 (b) The check is a payroll check drawn by an employer to the order
33 of its employee in payment for services performed by the employee.

34 (3) Except as otherwise permitted in this chapter, no licensee may
35 agree to hold a check or draft for later deposit. A licensee ~~((shall))~~

1 must deposit all checks and drafts cashed by the licensee as soon as
2 practicable.

3 (4) No licensee may issue or cause to be issued any check, draft,
4 or money order, or other commercial paper serving the same purpose,
5 that is drawn upon the trust account of a licensee without concurrently
6 receiving the full principal amount, in cash, or by check, draft, or
7 money order from a third party believed to be valid.

8 ~~(5) ((No licensee may advertise, print, display, publish,~~
9 ~~distribute, or broadcast or cause or permit to be advertised, printed,~~
10 ~~displayed, published, distributed, or broadcast, any statement or~~
11 ~~representation that is false, misleading, or deceptive, or that omits~~
12 ~~material information, or that refers to the supervision of the licensee~~
13 ~~by the state of Washington or any department or official of the state.~~

14 ~~(6))~~ Each licensee shall comply with all applicable state and
15 federal statutes ((governing currency transaction reporting)) relating
16 to the activities governed by this chapter.

17 **Sec. 10.** RCW 31.45.105 and 2007 c 81 s 1 are each amended to read
18 as follows:

19 (1) It is a violation of this chapter for any person subject to
20 this chapter to:

21 (a) Directly or indirectly employ any scheme, device, or artifice
22 to defraud or mislead any borrower, to defraud or mislead any lender,
23 or to defraud or mislead any person;

24 (b) Directly or indirectly engage in any unfair or deceptive
25 practice toward any person;

26 (c) Directly or indirectly obtain property by fraud or
27 misrepresentation; ~~((and))~~

28 (d) Make a small loan to any person physically located in
29 Washington through use of the internet, facsimile, telephone, kiosk, or
30 other means without first obtaining a small loan endorsement; and

31 (e) Sell in a retail installment transaction under chapter 63.14
32 RCW open loop prepaid access (prepaid access as defined in 31 C.F.R.
33 Part 1010.100(ww) and not closed loop prepaid access as defined in 31
34 C.F.R. Part 1010.100(kkk)).

35 (2) It is a violation of this chapter for any person subject to
36 this chapter to:

1 (a) Advertise, print, display, publish, distribute, or broadcast or
2 cause or permit to be advertised, printed, displayed, published,
3 distributed, or broadcast any statement or representation that is
4 false, misleading, or deceptive, or that omits material information;

5 (b) Fail to pay the annual assessment by the date and time as
6 specified in RCW 31.45.050;

7 (c) Fail to pay any other fee, assessment, or moneys due the
8 department.

9 (3) In addition to any other penalties, any transaction in
10 violation of subsection (1) of this section is uncollectible and
11 unenforceable.

12 **Sec. 11.** RCW 31.45.110 and 2003 c 86 s 17 are each amended to read
13 as follows:

14 (1) The director may issue and serve upon a licensee or applicant,
15 or any director, officer, sole proprietor, partner, or controlling
16 person of a licensee or applicant, a statement of charges if, in the
17 opinion of the director, any licensee or applicant, or any director,
18 officer, sole proprietor, partner, or controlling person of a licensee
19 or applicant:

20 (a) Is engaging or has engaged in an unsafe or unsound financial
21 practice in conducting ~~((the))~~ a business ~~((of a check seller))~~
22 governed by this chapter;

23 (b) Is violating or has violated this chapter, including violations
24 of:

25 (i) Any rules, orders, or subpoenas ~~((, any rule adopted under~~
26 ~~chapter 86, Laws of 2003, any order issued under chapter 86, Laws of~~
27 ~~2003, any subpoena issued under chapter 86, Laws of 2003, or))~~ issued
28 by the director under any act;

29 (ii) Any condition imposed in writing by the director ~~((or the~~
30 ~~director's designee))~~ in connection with the granting of any
31 application or other request by the licensee; or

32 (iii) Any written agreement made with the director;

33 (c) Is about to do the acts prohibited in (a) or (b) of this
34 subsection when the opinion that the threat exists is based upon
35 reasonable cause;

36 (d) Obtains a license by means of fraud, misrepresentation,
37 concealment, or through mistake or inadvertence of the director;

1 (e) Provides false statements or (~~(omissions of)~~) omits material
2 information on (~~(the)~~) an application (~~(that, if known, would have~~
3 ~~allowed the director to deny the application for the original~~
4 ~~license)~~);

5 (f) Knowingly or negligently omits material information during or
6 in response to an examination or in connection with an investigation by
7 the director;

8 (g) Fails to pay a fee or assessment required by the director or
9 any multistate licensing system prescribed by the director, or fails to
10 maintain the required bond or deposit;

11 (~~(g)~~) (h) Commits a crime against the laws of (~~(the state of~~
12 ~~Washington or any other state or government)~~) any jurisdiction
13 involving moral turpitude, financial misconduct, or dishonest dealings.
14 For the purposes of this section, a certified copy of the final holding
15 of any court, tribunal, agency, or administrative body of competent
16 jurisdiction is conclusive evidence in any hearing under this chapter;

17 (~~(h)~~) (i) Knowingly commits or is a party to any material fraud,
18 misrepresentation, concealment, conspiracy, collusion, trick, scheme,
19 or device whereby any other person relying upon the word,
20 representation, or conduct acts to his or her injury or damage;

21 (~~(i)~~) (j) Converts any money or its equivalent to his or her own
22 use or to the use of his or her principal or of any other person;

23 (~~(j)~~) (k) Fails(~~(, upon demand by the director or the director's~~
24 ~~designee,~~) to disclose any information within his or her knowledge
25 (~~(to,~~) or fails to produce any document, book, or record in his or her
26 possession for inspection (~~(of,~~) by the director (~~(or the director's~~
27 ~~designee)~~) upon demand;

28 (~~(k)~~) (l) Commits any act of fraudulent or dishonest dealing(~~(,~~
29 ~~and)~~). For the purposes of this section, a certified copy of the final
30 holding of any court, tribunal, agency, or administrative body of
31 competent jurisdiction (~~(regarding that act)~~) is conclusive evidence in
32 any hearing under this chapter; (~~(or~~

33 ~~(l)~~) (m) Commits an act or engages in conduct that demonstrates
34 incompetence or untrustworthiness, or is a source of injury and loss to
35 the public;

36 (n) Violates any applicable state or federal law relating to the
37 activities governed by this chapter.

1 (2) The statement of charges (~~shall~~) must be issued under chapter
2 34.05 RCW. The director or the director's designee may impose the
3 following sanctions against any licensee or applicant, or any
4 directors, officers, sole proprietors, partners, controlling persons,
5 or employees of a licensee or applicant:

6 (a) Deny, revoke, suspend, or condition (~~the~~) a license or small
7 loan endorsement;

8 (b) Order the licensee or person to cease and desist from practices
9 (~~in violation of~~) that violate this chapter or (~~practices that~~)
10 constitute unsafe and unsound financial practices (~~in the sale of~~
11 ~~checks~~);

12 (c) Impose a fine not to exceed one hundred dollars per day for
13 each day's violation of this chapter;

14 (d) Order restitution or refunds to borrowers or other parties
15 (~~damaged by the licensee's~~) for violations of this chapter or take
16 other affirmative action as necessary to comply with this chapter; and

17 (e) Remove from office or ban from participation in the affairs of
18 any licensee any director, officer, sole proprietor, partner,
19 controlling person, or employee of a licensee.

20 (3) The proceedings to impose the sanctions described in subsection
21 (2) of this section, including any hearing or appeal of the statement
22 of charges, are governed by chapter 34.05 RCW.

23 (4) Unless the licensee or person personally appears at the hearing
24 or is represented by a duly authorized representative, the licensee is
25 deemed to have consented to the statement of charges and the sanctions
26 imposed in the statement of charges.

27 (5) Except to the extent prohibited by another statute, the
28 director may engage in informal settlement of complaints or enforcement
29 actions including, but not limited to, payment to the department for
30 purposes of financial literacy and education programs authorized under
31 RCW 43.320.150.

32 **Sec. 12.** RCW 19.146.200 and 2006 c 19 s 9 are each amended to read
33 as follows:

34 (1) A person, unless specifically exempted from this chapter under
35 RCW 19.146.020, may not engage in the business of a mortgage broker or
36 loan originator without first obtaining and maintaining a license under
37 this chapter.

1 (2) A person may not bring a suit or action for the collection of
2 compensation in connection with a residential mortgage loan unless the
3 plaintiff alleges and proves that he or she was a duly licensed
4 mortgage broker, or exempt from the license requirement of this
5 chapter, at the time of offering to perform or performing any such an
6 act or service regulated by this chapter.

7 ~~(3) ((A mortgage broker license must be prominently displayed in
8 the mortgage broker's place of business.~~

9 ~~(4))~~ Every licensed mortgage broker must at all times have a
10 designated broker responsible for all activities of the mortgage broker
11 in conducting the business of a mortgage broker. A designated broker,
12 principal, or owner who has supervisory authority over a mortgage
13 broker is responsible for a licensee's, employee's, or independent
14 contractor's violations of this chapter and its rules if:

15 (a) The designated broker, principal, or owner directs or instructs
16 the conduct or, with knowledge of the specific conduct, approves or
17 allows the conduct; or

18 (b) The designated broker, principal, or owner who has supervisory
19 authority over the licensed mortgage broker knows or by the exercise of
20 reasonable care and inquiry should have known of the conduct, at a time
21 when its consequences can be avoided or mitigated and fails to take
22 reasonable remedial action.

23 NEW SECTION. **Sec. 13.** A new section is added to chapter 19.146
24 RCW to read as follows:

25 Except to the extent prohibited by another statute, the director
26 may engage in informal settlement of complaints or enforcement actions
27 including, but not limited to, payment to the department for purposes
28 of financial literacy and education programs authorized under RCW
29 43.320.150. If any person subject to this chapter makes a payment to
30 the department under this section, the person may not advertise such
31 payment.

32 NEW SECTION. **Sec. 14.** A new section is added to chapter 18.44 RCW
33 to read as follows:

34 Except to the extent prohibited by another statute, the director
35 may engage in informal settlement of complaints or enforcement actions

1 including, but not limited to, payment to the department for purposes
2 of financial literacy and education programs authorized under RCW
3 43.320.150.

4 NEW SECTION. **Sec. 15.** A new section is added to chapter 18.44 RCW
5 to read as follows:

6 Applicants may be required to make application through a multistate
7 licensing system as prescribed by the director. Existing licensees may
8 be required to transition onto a multistate licensing system as
9 prescribed by the director.

10 NEW SECTION. **Sec. 16.** A new section is added to chapter 19.230
11 RCW to read as follows:

12 Except to the extent prohibited by another statute, the director
13 may engage in informal settlement of complaints or enforcement actions
14 including, but not limited to, payment to the department for purposes
15 of financial literacy and education programs authorized under RCW
16 43.320.150.

17 NEW SECTION. **Sec. 17.** A new section is added to chapter 19.230
18 RCW to read as follows:

19 Applicants may be required to make application through a multistate
20 licensing system as prescribed by the director. Existing licensees may
21 be required to transition onto a multistate licensing system as
22 prescribed by the director.

23 **Sec. 18.** RCW 19.144.020 and 2008 c 108 s 3 are each amended to
24 read as follows:

25 (1) In addition to any other requirements under federal or state
26 law, a residential mortgage loan may not be made unless a disclosure
27 summary of all material terms, as adopted by the department in
28 subsection (2) of this section, is placed on a separate sheet of paper
29 and has been provided by a financial institution to the borrower within
30 three business days following receipt of a loan application. If any
31 material terms of the residential mortgage loan change before closing,
32 a new disclosure summary must be provided to the borrower within three
33 days of any such change or at least three days before closing,
34 whichever is earlier.

1 (2) The department shall adopt, by rule, a disclosure summary form
2 with a content and format containing simple, plain-language terms that
3 are reasonably understandable to the average person without the aid of
4 third-party resources and shall include, but not be limited to, the
5 following items: Fees and discount points on the loan; interest rates
6 of the loan; broker fees; the broker's yield spread premium as a dollar
7 amount; whether the loan contains prepayment penalties; whether the
8 loan contains a balloon payment; whether the property taxes and
9 property insurance are escrowed; whether the loan payments will adjust
10 at the fully indexed rates; and whether there is a price added or
11 premium charged because the loan is based on reduced documentation.

12 (3) The director may, at his or her discretion, require by rule
13 other information relating to a residential mortgage loan to be
14 included in the disclosure summary if the director determines that it
15 is necessary to protect consumers. The director may adopt rules
16 creating a standard form of disclosure summary to be used as a guide by
17 financial institutions in fulfilling the requirements of this section.

18 (4) Disclosure in compliance with the real estate settlement
19 procedures act, 12 U.S.C. Sec. 2601, and Regulation X, 24 C.F.R. Sec.
20 3500, as it exists on the effective date of this section, shall be
21 deemed to comply with the disclosure requirements of this section. If
22 needed, the director may adopt rules to implement and incorporate other
23 changes in the disclosure summary as necessary due to federal law.

Passed by the House February 1, 2012.

Passed by the Senate February 24, 2012.

Approved by the Governor March 7, 2012.

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