

2SSB 5774 - S AMD 172

By Senator Zeiger

NOT ADOPTED 03/06/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that a
4 postsecondary credential is essential to Washingtonians' ability to
5 attain jobs with good salaries and advancement opportunities, and
6 that meeting the increasing demand for credentialed workers to fill
7 jobs in Washington is essential to the future health of the state's
8 economy. The legislature finds that the amount of debt that
9 individual Washingtonians incur in pursuit of postsecondary
10 credentials represents a growing burden on individuals and on the
11 state's economy at large that negatively impacts individuals' ability
12 to obtain a postsecondary credential, as well as their ability to
13 save for retirement, purchase a home, and start a family. The
14 legislature finds that giving Washingtonians new tools to address
15 this burden is necessary to help make higher education more
16 accessible and affordable.

17 NEW SECTION. **Sec. 2.** The definitions in this section apply
18 throughout this chapter unless the context clearly requires
19 otherwise.

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

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

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

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

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

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

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

13 (8) "Individual" means any person who consults with or retains a
14 licensee or person subject to this chapter in an effort to obtain, or
15 who seeks information about entering into, an income share agreement
16 regardless of whether that person actually enters into an agreement.

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

19 (10) "Licensee" means a person to whom one or more licenses have
20 been issued. "Licensee" also means any person, whether located within
21 or outside of this state, who fails to obtain a license required by
22 this chapter.

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

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

31 NEW SECTION. **Sec. 3.** An income share agreement must:

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

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

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

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

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

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

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

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

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

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

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

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

34 NEW SECTION. **Sec. 4.** (1) No licensee may enter into an income
35 share agreement if the total percentage of an individual's future
36 income obligated under the agreement and any other income share
37 agreement entered into by the individual exceeds fifteen percent of
38 his or her future income.

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

4 NEW SECTION. **Sec. 5.** The duration of the individual's
5 obligations under the income share agreement may be extended for a
6 period of time equal to the time that the individual's annual income
7 is less than the exempt amount established in section 3(3) of this
8 act.

9 NEW SECTION. **Sec. 6.** (1) In the event of the sale of an income
10 share agreement by the originator of the agreement, the buyer of the
11 agreement is subject to the requirements of this chapter.

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

14 NEW SECTION. **Sec. 7.** It is a violation of this chapter for a
15 licensee, its officers, directors, employees, or independent
16 contractors, or any other person subject to this chapter to:

17 (1) Directly or indirectly employ any scheme, device, or artifice
18 to defraud or mislead any individual, to defraud or mislead any
19 lender, or to defraud or mislead any person;

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

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

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

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

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

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

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

- 1 (9) Fail to comply with the terms of the income share agreement;
2 or
3 (10) Fail to comply with advertising regulations set by rule.

4 NEW SECTION. **Sec. 8.** (1) No person may originate income share
5 agreements without first obtaining and maintaining a license in
6 accordance with this chapter.

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

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

13 NEW SECTION. **Sec. 9.** (1) Each application for a license under
14 this chapter must be in writing in a form prescribed by the director.
15 The application must contain at least the following information:

- 16 (a) The name and the business addresses of the applicant;
17 (b) If the applicant is a partnership, limited liability company,
18 or association, the name of every member;
19 (c) If the applicant is a corporation, the name, residence
20 address, and telephone number of each officer and director;
21 (d) The street address, county, and municipality from which
22 business is to be conducted; and
23 (e) Other information as the director may require by rule.

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

1 apply to financial institutions regulated under chapters 31.12 and
2 31.13 RCW and Titles 30A, 32, and 33 RCW.

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

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

28 NEW SECTION. **Sec. 10.** (1) The director must issue a license to
29 the applicant to originate income share agreements in accordance with
30 this chapter at the location specified in the application if, after
31 investigation, the director finds that:

- 32 (a) The applicant has paid all required fees;
33 (b) The applicant has submitted a complete application in
34 compliance with section 9 of this act;
35 (c) Neither the applicant nor its officers or principals have had
36 a license issued under this section, in this state or another state,
37 revoked or suspended within the last five years of the date of filing
38 of the application;

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

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

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

20 NEW SECTION. **Sec. 11.** The licensee may not maintain more than
21 one place of business under the same license, but the director may
22 issue more than one license to the same licensee upon application by
23 the licensee in a form and manner established by the director.

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

29 NEW SECTION. **Sec. 12.** A licensee must, for each license held by
30 any person, on or before the first day of each March, pay to the
31 director an annual assessment as determined by rule by the director.
32 The licensee must be responsible for payment of the annual assessment
33 for the previous calendar year if the licensee had a license for any
34 time during the preceding calendar year, regardless of whether they
35 surrendered their license during the calendar year or whether their
36 license was suspended or revoked. At the same time the licensee must
37 file with the director the required bond or otherwise demonstrate
38 compliance with section 8 of this act.

1 NEW SECTION. **Sec. 13.** (1) The director must enforce all laws
2 and rules relating to the licensing and regulation of licensees and
3 persons subject to this chapter.

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

5 (a) Failure of the applicant to demonstrate within its
6 application for a license that it meets the requirements for
7 licensing in sections 8 and 9 of this act;

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

12 (c) Revocation or suspension of a license to originate income
13 share agreements by this state, another state, or by the federal
14 government within five years of the date of submittal of a complete
15 application for a license; or

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

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

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

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

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

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

38 The director may condition, revoke, or suspend only the particular
39 license with respect to which grounds for conditioning, revocation,

1 or suspension may occur or exist or the director may condition,
2 revoke, or suspend all of the licenses issued to the licensee.

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

7 (a) Any violation of this chapter; or

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

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

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

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

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

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

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

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

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

29 (c) Suspension or revocation of a license to engage in the
30 origination of income share agreements in this state or another
31 state;

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

34 (e) A violation of this section or section 6 or 16 of this act;
35 or

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

38 (7) Except to the extent prohibited by another statute, the
39 director may engage in informal settlement of complaints or
40 enforcement actions including, but not limited to, payment to the

1 department for purposes of financial literacy and education programs
2 authorized under RCW 43.320.150. If any person subject to this
3 chapter makes a payment to the department under this section, the
4 person may not advertise the payment.

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

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

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

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

38 (12) A license issued under this chapter expires upon the
39 licensee's failure to comply with the annual assessment requirements
40 in section 12 of this act and the rules. The department must provide

1 notice of the expiration to the address of record provided by the
2 licensee. On the fifteenth day after the department provides notice,
3 if the assessment remains unpaid, the license expires. The licensee
4 must receive notice prior to expiration and have the opportunity to
5 stop the expiration as set forth in rule.

6 NEW SECTION. **Sec. 14.** No licensee may advertise, print,
7 display, publish, distribute, or broadcast or cause or permit to be
8 advertised, printed, displayed, published, distributed, or broadcast,
9 in any manner whatsoever, any statement or representation with regard
10 to the terms or conditions for income share agreements that is false,
11 misleading, or deceptive.

12 NEW SECTION. **Sec. 15.** (1) The director or authorized assistants
13 may apply for and obtain a superior court order approving and
14 authorizing a subpoena in advance of its issuance. The application
15 may be made in the county where the subpoenaed person resides or is
16 found, or the county where the subpoenaed documents, records, or
17 evidence are located, or in Thurston county. The application must:

18 (a) State that an order is sought under this section;
19 (b) Adequately specify the documents, records, evidence, or
20 testimony; and

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

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

31 (3) The director or authorized assistants may seek approval and a
32 court may issue an order under this section without prior notice to
33 any person, including the person to whom the subpoena is directed and
34 the person who is the subject of an investigation. An application for
35 court approval is subject to the fee and process set forth in RCW
36 36.18.012(3).

1 NEW SECTION. **Sec. 16.** (1) For the purpose of discovering
2 violations of this chapter or securing information lawfully required
3 under this chapter, the director may at any time, either personally
4 or by designees, investigate or examine the loans and business and,
5 wherever located, the books, accounts, records, papers, documents,
6 files, and other information used in the business of every licensee
7 and of every person who is engaged in the business of making or
8 assisting in the making of income share agreements authorized by this
9 chapter, whether the person acts or claims to act as principal or
10 agent, or under or without the authority of this chapter. The
11 director or designated representative:

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

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

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

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

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

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

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

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

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

11 (c) Use, hire, contract, or employ public or privately available
12 analytical systems, methods, or software to examine or investigate
13 the licensee, individual, or person subject to chapter 120, Laws of
14 2009;

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

17 (e) Accept audit reports made by an independent certified public
18 accountant for the licensee in the course of that part of the
19 examination covering the same general subject matter as the audit and
20 may incorporate the audit report in the report of the examination,
21 report of investigation, or other writing of the director; or

22 (f) Assess the licensee the cost of the services in (a) of this
23 subsection.

24 NEW SECTION. **Sec. 17.** (1)(a) The licensee must keep and use in
25 the business such books, accounts, records, papers, documents, files,
26 and other information as will enable the director to determine
27 whether the licensee is complying with this chapter and with the
28 rules adopted by the director under this chapter.

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

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

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

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

13 NEW SECTION. **Sec. 18.** (1) The director has the power, and broad
14 administrative discretion, to administer and interpret this chapter
15 to facilitate the delivery of financial services to the citizens of
16 this state by income share agreement originators subject to this
17 chapter. The director must adopt all rules necessary to administer
18 this chapter and to ensure complete and full disclosure by licensees
19 of lending transactions governed by this chapter.

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

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

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

35 NEW SECTION. **Sec. 19.** (1) A person who violates, or knowingly
36 aids or abets in the violation of any provision of this chapter, for
37 which no penalty has been prescribed, and a person who fails to
38 perform any act that it is his or her duty to perform under this

1 chapter and for which failure no penalty has been prescribed, is
2 guilty of a gross misdemeanor.

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

8 NEW SECTION. **Sec. 20.** The proceedings for denying license
9 applications, issuing cease and desist orders, suspending or revoking
10 licenses, and imposing civil penalties or other remedies under this
11 chapter, and any review or appeal of such action, is governed by the
12 administrative procedure act, chapter 34.05 RCW.

13 NEW SECTION. **Sec. 21.** (1) The director or designated persons
14 may, at his or her discretion, take any action as provided for in
15 this chapter to enforce this chapter. If the person subject to this
16 action does not appear in person or by counsel at the time and place
17 designated for any administrative hearing that may be held on the
18 action, then the person is deemed to consent to the action. If the
19 person subject to the action consents, or if after hearing the
20 director finds by a preponderance of the evidence that any grounds
21 for sanctions under this chapter exist, then the director may impose
22 any sanction authorized by this chapter.

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

28 NEW SECTION. **Sec. 22.** Any income share agreement originated by
29 an unlicensed person as prohibited under this chapter is
30 unenforceable in Washington.

31 NEW SECTION. **Sec. 23.** The legislature finds that the practices
32 governed by this chapter are matters vitally affecting the public
33 interest for the purpose of applying the consumer protection act,
34 chapter 19.86 RCW. Any violation of this chapter is not reasonable in
35 relation to the development and preservation of business and is an
36 unfair and deceptive act or practice and unfair method of competition

1 in the conduct of trade or commerce in violation of RCW 19.86.020.
2 Remedies provided by chapter 19.86 RCW are cumulative and not
3 exclusive.

4 **Sec. 24.** RCW 31.04.025 and 2015 c 229 s 20 are each amended to
5 read as follows:

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

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

10 (a) Any person doing business under, and as permitted by, any law
11 of this state or of the United States relating to banks, savings
12 banks, trust companies, savings and loan or building and loan
13 associations, or credit unions;

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

15 (c) Entities conducting transactions under chapter 63.14 RCW
16 (retail installment sales of goods and services), unless credit is
17 extended to purchase merchandise certificates, coupons, open or
18 closed loop stored value, or other similar items issued and
19 redeemable by a retail seller other than the retail seller extending
20 the credit;

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

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

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

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

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

38 (i) Entities making loans under programs of the United States
39 department of agriculture, department of housing and urban

1 development, or other federal government program that provides
2 funding or access to funding for single-family housing developments
3 or grants to low-income individuals for the purchase or repair of
4 single-family housing;

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

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

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

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

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

21 (3) The director may, at his or her discretion, waive
22 applicability of the consumer loan company licensing provisions of
23 this chapter to other persons, not including individuals subject to
24 the S.A.F.E. act, making or servicing loans when the director
25 determines it necessary to facilitate commerce and protect consumers.

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

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

31 **Sec. 25.** RCW 19.52.080 and 1981 c 78 s 2 are each amended to
32 read as follows:

33 Profit and nonprofit corporations, Massachusetts trusts,
34 associations, trusts, general partnerships, joint ventures, limited
35 partnerships, and governments and governmental subdivisions,
36 agencies, or instrumentalities may not plead the defense of usury nor
37 maintain any action thereon or therefor, and persons may not plead
38 the defense of usury nor maintain any action thereon or therefor if
39 the transaction was primarily for agricultural, commercial,

1 investment, or business purposes (~~(: PROVIDED, HOWEVER, That)~~). Except
2 for income share agreements, as defined in section 2 of this act,
3 this section shall not apply to a consumer transaction of any amount.

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

6 **Sec. 26.** RCW 21.20.320 and 2006 c 220 s 1 are each amended to
7 read as follows:

8 The following transactions are exempt from RCW 21.20.040 through
9 21.20.300 and 21.20.327 except as expressly provided:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (12) Any offer (but not a sale) of a security for which
39 registration statements have been filed under both this chapter and
40 the Securities Act of 1933 if no stop order or refusal order is in

1 effect and no public proceeding or examination looking toward such an
2 order is pending under either act.

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

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

12 (15) The offer or sale by a registered broker-dealer, or a person
13 exempted from the registration requirements pursuant to RCW
14 21.20.040, acting either as principal or agent, of securities
15 previously sold and distributed to the public: PROVIDED, That:

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

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

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

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

34 (a) The transaction:

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

36 (ii) Involves advertising or public solicitation, and:

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

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

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

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

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

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

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

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

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

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

37 NEW SECTION. Sec. 27. Sections 1 through 23 of this act
38 constitute a new chapter in Title 31 RCW.

1 NEW SECTION. **Sec. 28.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires
3 otherwise.

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

5 (2) "Financial institution" has the same meaning as in RCW
6 7.88.010.

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

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

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

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

18 (a) Resident of the state of Washington;

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

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

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

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

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

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

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

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

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

9 (8) This section expires July 1, 2029.

10 NEW SECTION. **Sec. 29.** (1) Subject to amounts appropriated
11 specifically for this purpose, the Washington student loan
12 refinancing program is created.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (4) This section expires July 1, 2029.

21 NEW SECTION. **Sec. 30.** Sections 28 and 29 of this act constitute
22 a new chapter in Title 28B RCW.

23 NEW SECTION. **Sec. 31.** This act may be known and cited as the
24 student loan relief and reform act."

2SSB 5774 - S AMD 172

By Senator Zeiger

NOT ADOPTED 03/06/2019

25 On page 1, line 1 of the title, after "relief;" strike the
26 remainder of the title and insert "amending RCW 31.04.025, 19.52.080,
27 and 21.20.320; adding a new chapter to Title 31 RCW; adding a new
28 chapter to Title 28B RCW; creating a new section; providing
29 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.

--- END ---