
HOUSE BILL 1923

State of Washington

64th Legislature

2015 Regular Session

By Representatives Zeiger, Bergquist, Kirby, Haler, Hargrove, and Parker

Read first time 02/02/15. Referred to Committee on Business & Financial Services.

1 AN ACT Relating to income share agreements; amending RCW
2 19.52.080; reenacting and amending RCW 31.04.025; adding a new
3 chapter to Title 31 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that student loan
6 debt exceeds one trillion dollars and is increasing. For the most
7 recent cohort of students who began repaying loans in the year 2011,
8 approximately one out of seven of those student loans are in default.
9 Income share agreements are an alternative to loans and would allow
10 an individual to receive funds to pay for higher education or
11 workforce development in exchange for a certain percentage of his or
12 her income over a fixed period of time. The payment obligations under
13 income share agreements would be based upon the individual's income,
14 and these agreements would provide a tool to address the increasing
15 rate of student loan debt and the rate of defaults.

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

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

1 (2) "Borrower" means any person who consults with or retains a
2 licensee or person subject to this chapter in an effort to obtain, or
3 who seeks information about entering into, an income share agreement
4 regardless of whether that person actually enters into an agreement.

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

6 (4) "Director" means the director of financial institutions.

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

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

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

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

23 (9) "Licensee" means a person to whom one or more licenses have
24 been issued.

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

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

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

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

36 (3) Specify that at least the first ten thousand dollars of an
37 individual's income is exempt when determining the individual's
38 income for a given year; the amount of the exemption must be adjusted
39 annually to reflect changes in the consumer price index for all urban

1 consumers published by the bureau of labor statistics of the
2 department of labor for the most recent twelve-month period for which
3 such data are available;

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

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

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

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

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

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

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

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

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

29 NEW SECTION. **Sec. 4.** No individual may enter into an income
30 share agreement if the total percentage of his or her future income
31 obligated under the agreement and any other income share agreement
32 entered into by the individual exceeds fifteen percent of his or her
33 future income.

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

1 NEW SECTION. **Sec. 6.** In the event of the sale of an income
2 share agreement by the originator of the agreement, the buyer of the
3 agreement is subject to the requirements of this chapter.

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

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

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

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

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

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

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

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

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

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

34 (10) Originate income share agreements from any unlicensed
35 location.

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

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

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

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

8 (b) If the applicant is a partnership or association, the name of
9 every member;

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

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

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

15 (2) As part of or in connection with an application for any
16 license under this section, or periodically upon license renewal,
17 each officer, director, and owner applicant must furnish information
18 concerning his or her identity, including fingerprints for submission
19 to the Washington state patrol, the federal bureau of investigation,
20 or any governmental agency or entity authorized to receive this
21 information for a state and national criminal history background
22 check, personal history, experience, business record, purposes, and
23 other pertinent facts, as the director may reasonably require. As
24 part of or in connection with an application for a license under this
25 chapter, or periodically upon license renewal, the director is
26 authorized to receive criminal history record information that
27 includes nonconviction data as defined in RCW 10.97.030. The
28 department may only disseminate nonconviction data obtained under
29 this section to criminal justice agencies. This section does not
30 apply to financial institutions regulated under chapters 31.12 and
31 31.13 RCW and Titles 30A, 32, and 33 RCW.

32 (3) At the time of filing an application for a license under this
33 chapter, each applicant must pay to the director an investigation fee
34 and the license fee in an amount determined by rule of the director
35 to be sufficient to cover the director's costs in administering this
36 chapter.

37 (4) Each applicant must file and maintain a surety bond, approved
38 by the director, executed by the applicant as obligor and by a surety
39 company authorized to do a surety business in this state as surety,

1 whose liability as such surety must not exceed in the aggregate the
2 penal sum of the bond. The penal sum of the bond must be a minimum of
3 thirty thousand dollars and based on the annual dollar amount of
4 income share agreements originated. The bond must run to the state of
5 Washington as obligee for the use and benefit of the state and of any
6 person or persons who may have a cause of action against the obligor
7 under this chapter. The bond must be conditioned that the obligor as
8 licensee will faithfully conform to and abide by this chapter and all
9 the rules adopted under this chapter. The bond must pay to the state
10 and any person or persons having a cause of action against the
11 obligor all moneys that may become due and owing to the state and
12 those persons under and by virtue of this chapter. In lieu of a
13 surety bond, if the applicant is a Washington business corporation,
14 the applicant may maintain unimpaired capital, surplus, and long-term
15 subordinated debt in an amount that at any time its outstanding
16 promissory notes or other evidences of debt (other than long-term
17 subordinated debt) in an aggregate sum do not exceed three times the
18 aggregate amount of its unimpaired capital, surplus, and long-term
19 subordinated debt. The director may define qualifying "long-term
20 subordinated debt" for purposes of this section.

21 NEW SECTION. **Sec. 10.** (1) The director must issue and deliver a
22 license to the applicant to originate income share agreements in
23 accordance with this chapter at the location specified in the
24 application if, after investigation, the director finds that:

25 (a) The applicant has paid all required fees;

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

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

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

37 (e) The financial responsibility, experience, character, and
38 general fitness of the applicant are such as to command the
39 confidence of the community and to warrant a belief that the business

1 will be operated honestly, fairly, and efficiently within the
2 purposes of this chapter.

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

12 NEW SECTION. **Sec. 11.** The license must state the address at
13 which the business is to be conducted and must state fully the name
14 of the licensee, and if the licensee is a copartnership or
15 association, the names of its members, and, if a corporation, the
16 date and place of its incorporation. The license is not transferable
17 or assignable.

18 NEW SECTION. **Sec. 12.** The licensee may not maintain more than
19 one place of business under the same license, but the director may
20 issue more than one license to the same licensee upon application by
21 the licensee in a form and manner established by the director.

22 Whenever a licensee wishes to change the place of business to a
23 street address other than that designated in the license, the
24 licensee must give written notice to the director as required by
25 rule, pay the license fee, and obtain the director's approval.

26 NEW SECTION. **Sec. 13.** A licensee must, for each license held by
27 any person, on or before the first day of each March, pay to the
28 director an annual assessment as determined by rule by the director.
29 The licensee must be responsible for payment of the annual assessment
30 for the previous calendar year if the licensee had a license for any
31 time during the preceding calendar year, regardless of whether they
32 surrendered their license during the calendar year or whether their
33 license was suspended or revoked. At the same time the licensee must
34 file with the director the required bond or otherwise demonstrate
35 compliance with section 8 of this act.

1 NEW SECTION. **Sec. 14.** (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 suspend or revoke a license issued under
23 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; or

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. The director may revoke or suspend only the particular
36 license with respect to which grounds for revocation or suspension
37 may occur or exist unless the director finds that the grounds for
38 revocation or suspension are of general application to all offices or
39 to more than one office operated by the licensee, in which case, the

1 director may revoke or suspend all of the licenses issued to the
2 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 order or subpoena issued by the
9 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; or

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

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

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

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

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

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

32 (e) A violation of this section or section 6 or 18 of this act;
33 or

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

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

1 chapter makes a payment to the department under this section, the
2 person may not advertise the payment.

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

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

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

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

36 (12) A license issued under this chapter expires upon the
37 licensee's failure to comply with the annual assessment requirements
38 in section 13 of this act and the rules. The department must provide
39 notice of the expiration to the address of record provided by the
40 licensee. On the fifteenth day after the department provides notice,

1 if the assessment remains unpaid, the license expires. The licensee
2 must receive notice prior to expiration and have the opportunity to
3 stop the expiration as set forth in rule.

4 NEW SECTION. **Sec. 15.** For all income share agreements
5 originated the licensee must make disclosures in compliance with the
6 truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R.
7 Part 226, and all other applicable federal laws and regulations.

8 NEW SECTION. **Sec. 16.** No licensee may advertise, print,
9 display, publish, distribute, or broadcast or cause or permit to be
10 advertised, printed, displayed, published, distributed, or broadcast,
11 in any manner whatsoever, any statement or representation with regard
12 to the terms or conditions for income share agreements that is false,
13 misleading, or deceptive.

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

- 20 (a) State that an order is sought under this section;
21 (b) Adequately specify the documents, records, evidence, or
22 testimony; and
23 (c) Include a declaration made under oath that an investigation
24 is being conducted for a lawfully authorized purpose related to an
25 investigation within the department's authority and that the
26 subpoenaed documents, records, evidence, or testimony are reasonably
27 related to an investigation within the department's authority.

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

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

1 court approval is subject to the fee and process set forth in RCW
2 36.18.012(3).

3 NEW SECTION. **Sec. 18.** (1) For the purpose of discovering
4 violations of this chapter or securing information lawfully required
5 under this chapter, the director may at any time, either personally
6 or by designees, investigate or examine the loans and business and,
7 wherever located, the books, accounts, records, papers, documents,
8 files, and other information used in the business of every licensee
9 and of every person who is engaged in the business of making or
10 assisting in the making of income share agreements authorized by this
11 chapter, whether the person acts or claims to act as principal or
12 agent, or under or without the authority of this chapter. The
13 director or designated representative:

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

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

25 (c) May require the production of original books, accounts,
26 papers, records, files, and other information; may require that such
27 original books, accounts, papers, records, files, and other
28 information be copied; or may make copies of such original books,
29 accounts, papers, records, files, or other information;

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

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

37 (3) Every licensee examined or investigated by the director or
38 the director's designee must pay to the director the cost of the

1 examination or investigation of each licensed place of business as
2 determined by rule by the director.

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

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

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

13 (c) Use, hire, contract, or employ public or privately available
14 analytical systems, methods, or software to examine or investigate
15 the licensee, individual, or person subject to chapter 120, Laws of
16 2009;

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

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

24 (f) Assess the licensee the cost of the services in (a) of this
25 subsection.

26 NEW SECTION. **Sec. 19.** (1)(a) The licensee must keep and use in
27 the business such books, accounts, records, papers, documents, files,
28 and other information as will enable the director to determine
29 whether the licensee is complying with this chapter and with the
30 rules adopted by the director under this chapter.

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

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

38 (d) No licensee or person subject to examination or investigation
39 under this chapter may withhold, abstract, remove, mutilate, destroy,

1 or secrete any books, accounts, records, papers, documents, files, or
2 other information.

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

15 NEW SECTION. **Sec. 20.** (1) The director has the power, and broad
16 administrative discretion, to administer and interpret this chapter
17 to facilitate the delivery of financial services to the citizens of
18 this state by income share agreement originators subject to this
19 chapter. The director must adopt all rules necessary to administer
20 this chapter and to ensure complete and full disclosure by licensees
21 of lending transactions governed by this chapter.

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

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

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

37 NEW SECTION. **Sec. 21.** (1) A person who violates, or knowingly
38 aids or abets in the violation of any provision of this chapter, for

1 which no penalty has been prescribed, and a person who fails to
2 perform any act that it is his or her duty to perform under this
3 chapter and for which failure no penalty has been prescribed, is
4 guilty of a gross misdemeanor.

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

10 NEW SECTION. **Sec. 22.** The proceedings for denying license
11 applications, issuing cease and desist orders, suspending or revoking
12 licenses, and imposing civil penalties or other remedies under this
13 chapter, and any review or appeal of such action, is governed by the
14 administrative procedure act, chapter 34.05 RCW.

15 NEW SECTION. **Sec. 23.** The director or designated persons may,
16 at his or her discretion, take any action as provided for in this
17 chapter to enforce this chapter. If the person subject to this action
18 does not appear in person or by counsel at the time and place
19 designated for any administrative hearing that may be held on the
20 action, then the person is deemed to consent to the action. If the
21 person subject to the action consents, or if after hearing the
22 director finds by a preponderance of the evidence that any grounds
23 for sanctions under this chapter exist, then the director may impose
24 any sanction authorized by this chapter.

25 NEW SECTION. **Sec. 24.** The legislature finds that the practices
26 governed by this chapter are matters vitally affecting the public
27 interest for the purpose of applying the consumer protection act,
28 chapter 19.86 RCW. Any violation of this chapter is not reasonable in
29 relation to the development and preservation of business and is an
30 unfair and deceptive act or practice and unfair method of competition
31 in the conduct of trade or commerce in violation of RCW 19.86.020.
32 Remedies provided by chapter 19.86 RCW are cumulative and not
33 exclusive.

34 **Sec. 25.** RCW 31.04.025 and 2013 c 64 s 2 and 2013 c 29 s 2 are
35 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

24 (g) Entities making loans under chapter 43.185 RCW (housing trust
25 fund);

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

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

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

39 (k) Individuals employed by a licensed residential loan servicing
40 company, unless so required by federal law or regulation; (~~and~~)

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

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

7 (3) The director may, at his or her discretion, waive
8 applicability of the consumer loan company licensing provisions of
9 this chapter to other persons, not including individuals subject to
10 the S.A.F.E. act, making or servicing loans when the director
11 determines it necessary to facilitate commerce and protect consumers.
12 The director may adopt rules interpreting this section.

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

17 **Sec. 26.** RCW 19.52.080 and 1981 c 78 s 2 are each amended to
18 read as follows:

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

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

31 NEW SECTION. **Sec. 27.** Sections 1 through 24 of this act
32 constitute a new chapter in Title 31 RCW.

--- END ---