

Title 31

MISCELLANEOUS LOAN AGENCIES

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31.04.015 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

(1) "Add-on method" means the method of precomputing interest payable on a loan whereby the interest to be earned is added to the principal balance and the total plus any charges allowed under this chapter is stated as the loan amount, without further provision for the payment of interest except for failure to pay according to loan terms. The director may adopt by rule a more detailed explanation of the meaning and use of this method.

(2) "Affiliate" means any person who, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

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

(4) "Borrower" means any person who consults with or retains a licensee or person subject to this chapter in an effort to obtain, or who seeks information about obtaining a loan, regardless of whether that person actually obtains such a loan. "Borrower" includes a person who consults with or retains a licensee or person subject to this chapter in an effort to obtain, or who seeks information about obtaining a residential mortgage loan modification, regardless of whether that person actually obtains a residential mortgage loan modification.

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

(6) "Depository institution" has the same meaning as in section 3 of the federal deposit insurance act on July 26, 2009, and includes credit unions.

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

(8) "Educational institution" means any entity that is a degree-granting institution as defined in RCW 28B.85.010, a private vocational school as defined in RCW 28C.10.020, or school as defined in RCW 18.16.020.

(9) "Federal banking agencies" means the board of governors of the federal reserve system, comptroller of the currency, director of the office of thrift supervision, national credit union administration, and federal deposit insurance corporation.

(10) "Individual servicing a mortgage loan" means a person on behalf of a lender or servicer licensed by this state, who collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due, on existing obligations due and owing to the licensed lender or servicer for a residential mortgage loan when the borrower is in default, or in reasonably foreseeable likelihood of

default, working with the borrower and the licensed lender or servicer, collects data and makes decisions necessary to modify either temporarily or permanently certain terms of those obligations, or otherwise finalizing collection through the foreclosure process.

(11) "Insurance" means life insurance, disability insurance, property insurance, involuntary unemployment insurance, and such other insurance as may be authorized by the insurance commissioner.

(12) "License" means a single license issued under the authority of this chapter.

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

(14) "Loan" means a sum of money lent at interest or for a fee or other charge and includes both open-end and closed-end loan transactions.

(15) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under this chapter.

(16) "Making a loan" means advancing, offering to advance, or making a commitment to advance funds to a borrower for a loan.

(17) "Mortgage broker" means the same as defined in RCW 19.146.010, except that for purposes of this chapter, a licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a consumer loan licensee acting as the mortgage broker in the same loan transaction.

(18)(a) "Mortgage loan originator" means an individual who for compensation or gain (i) takes a residential mortgage loan application, or (ii) offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" also includes individuals who hold themselves out to the public as able to perform any of these activities. "Mortgage loan originator" does not include any individual who performs purely administrative or clerical tasks; and does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code. For the purposes of this definition, administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing of a residential mortgage loan.

(b) "Mortgage loan originator" also includes an individual who for direct or indirect compensation or gain performs residential mortgage loan modification services or holds himself or herself out as being able to perform residential mortgage loan modification services.

(c) "Mortgage loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. For the purposes of chapter 120, Laws of 2009, the term "real estate brokerage activity" means

any activity that involves offering or providing real estate brokerage services to the public, including:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction;

(iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) Offering to engage in any activity, or act in any capacity, described in (c)(i) through (iv) of this subsection.

(d) This subsection does not apply to employees of a housing counseling agency approved by the United States department of housing and urban development unless the employees of a housing counseling agency are required under federal law to be individually licensed as mortgage loan originators.

(19) "Nationwide mortgage licensing system" means a licensing system developed and maintained by the conference of state bank supervisors for licensing and registration.

(20) "Officer" means an official appointed by the company for the purpose of making business decisions or corporate decisions.

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

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

(23) "Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator and is an employee of a depository institution; a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or an institution regulated by the farm credit administration and is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system.

(24) "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other consensual security interest on a dwelling, as defined in the truth in lending act, or residential real estate upon which is constructed or intended to be constructed a dwelling.

(25) "Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include but are not limited to forbearances; repayment plans; changes in interest rates, loan terms, or loan types; capitalizations of arrearages; or principal reductions.

(26) "Residential mortgage loan modification services" includes negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a residential mortgage loan modification for compensation or gain. "Residential mortgage loan modification services" also

includes the collection of data for submission to an entity performing mortgage loan modification services.

(27) "S.A.F.E. act" means the secure and fair enforcement for mortgage licensing act of 2008, Title V of the housing and economic recovery act of 2008 ("HERA"), P.L. 110-289, effective July 30, 2008.

(28) "Senior officer" means an officer of a licensee at the vice president level or above.

(29) "Service or servicing a loan" means on behalf of the lender or investor of a residential mortgage loan: (a) Collecting or receiving payments on existing obligations due and owing to the lender or investor, including payments of principal, interest, escrow amounts, and other amounts due; (b) collecting fees due to the servicer; (c) working with the borrower and the licensed lender or servicer to collect data and make decisions necessary to modify certain terms of those obligations either temporarily or permanently; (d) otherwise finalizing collection through the foreclosure process; or (e) servicing a reverse mortgage loan.

(30) "Service or servicing a reverse mortgage loan" means, pursuant to an agreement with the owner of a reverse mortgage loan: Calculating, collecting, or receiving payments of interest or other amounts due; administering advances to the borrower; and providing account statements to the borrower or lender.

(31) "Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balances of the principal of the loan outstanding for the time outstanding.

(a) On a nonresidential loan each payment is applied first to any unpaid penalties, fees, or charges, then to accumulated interest, and the remainder of the payment applied to the unpaid balance of the principal until paid in full. In using such method, interest must not be payable in advance nor compounded. The prohibition on compounding interest does not apply to reverse mortgage loans made in accordance with the Washington state reverse mortgage act. The director may adopt by rule a more detailed explanation of the meaning and use of this method.

(b) On a residential mortgage loan payments are applied as determined in the security instrument.

(32) "Student education loan" means any loan solely for personal use to finance postsecondary education and costs of attendance at an educational institution. A student education loan includes a loan made to refinance a student education loan. A student education loan does not include a payment plan or accounts receivable at a higher education institution as defined in RCW 28B.07.020(4) only during the time of a student's enrollment in the higher education institution, not to include a refinanced payment plan or accounts receivable, an extension of credit under an open-end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling.

(33) "Student education loan borrower" means: (a) Any resident of this state who has received or agreed to pay a student education loan; or (b) any person who shares responsibility with such resident for repaying the student education loan.

(34) "Student education loan servicer" means any person, wherever located, responsible for the servicing of any student education loan to any student education loan borrower.

(35) "Student education loan servicing" or "service a student education loan" means: (a) Receiving any scheduled periodic payments from a student education loan borrower pursuant to the terms of a student education loan; (b) applying the payments of principal and interest and such other payments with respect to the amounts received from a student education loan borrower, as may be required pursuant to the terms of a student education loan; (c) working with the student education loan borrower to collect data, or collecting data, to make decisions to modify the loan; or (d) performing other administrative services with respect to a student education loan including collection activities. "Student education loan servicing" does not include third-party student education loan modification services.

(36) "Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.

(37) "Third-party service provider" means any person other than the licensee or a mortgage broker who provides goods or services to the licensee or borrower in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, real estate brokers or salespersons, title insurance companies and agents, appraisers, structural and pest inspectors, or escrow companies.

(38) "Third-party student education loan modification services" means for compensation or other consideration by or on behalf of the borrower working with the student education loan borrower or his or her representative to collect data or prepare or submit documents, or collecting data and preparing or submitting documents, to modify, refinance, or consolidate the loan, or change repayment plans.

(39) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system. [2018 c 62 § 9. Prior: 2015 c 229 § 19; 2013 c 29 § 1; 2010 c 35 § 1; prior: 2009 c 149 § 12; 2009 c 120 § 2; 2001 c 81 § 1; 1994 c 92 § 161; 1991 c 208 § 2.]

Findings—Declarations—2009 c 120: "The legislature finds and declares that accessibility to credit is vital to the citizens of this state. The legislature declares that it is essential for the protection of citizens of this state and the stability of the state's economy that standards for licensing and regulation of the business practices of lenders be imposed. The legislature further finds that the activities of lenders and mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable, and immediate impact upon this state's consumers, this state's economy, the neighborhoods and communities of this state, and the housing and real estate industry. The legislature therefore declares that this act is necessary to encourage responsible lending in all credit transactions, to protect borrowers, and to preserve access to credit in the residential real estate lending market." [2009 c 120 § 1.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The director may adopt rules interpreting this section. [2015 c 229 § 20. Prior: 2013 c 64 § 2; 2013 c 29 § 2; 2012 c 17 § 1; prior: 2011 c 191 § 1; prior: 2009 c 311 § 1; 2009 c 120 § 3; 2008 c 78 § 1; 2001 c 81 § 2; 1991 c 208 § 4.]

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

Additional notes found at www.leg.wa.gov

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) Make or originate loans from any unlicensed location. It is not a violation for a licensed mortgage loan originator to originate loans from an unlicensed location if that loca-

tion is the licensed mortgage loan originator's residence and the licensed mortgage loan originator and licensed sponsoring company comply with RCW 31.04.075.

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

(a) Conduct licensable activity from any unlicensed location;

(b) Misrepresent or omit any material information in connection with the servicing of a student education loan including, but not limited to, misrepresenting the amount, nature, conditions, or terms of any fee or payment due or claimed to be due on a student education loan, the terms and conditions of the loan agreement, the availability of loan discharge or forgiveness options, the availability and terms of and process for enrolling in income-driven repayment, or the borrower's obligations under the loan;

(c) Provide inaccurate information to a credit bureau, thereby harming a student education loan borrower's credit-worthiness, including failing to report both the favorable and unfavorable payment history of the student education loan;

(d) Fail to report to a consumer credit bureau at least annually if the student education loan servicer regularly reports information to a credit bureau;

(e) Refuse to communicate with an authorized representative of the student education loan borrower who provides a written authorization signed by the student education loan borrower. However, the student education loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student education loan borrower;

(f) Refuse to communicate with the student education loan borrower or an authorized representative of the student education loan borrower;

(g) Apply payments made by a borrower to the outstanding balance of a student education loan, or allocate a payment across a group of student education loans, in a manner that does not conform with the borrower's stated intent. However, this subsection (2)(g) does not require application of a student education loan in a manner contrary to the express terms of the promissory note;

(h) Fail to respond within fifteen calendar days to communications from the student loan advocate, or within such shorter, reasonable time as the student loan advocate may request in his or her communication; or

(i) Fail to provide a response within fifteen calendar days to a consumer complaint submitted to the servicer by the student loan advocate. If necessary, a licensee may request additional time up to a maximum of forty-five calendar days, provided that such request is accompanied by an explanation why such additional time is reasonable and necessary.

(3) The director's obligations or duties under chapter 62, Laws of 2018 are subject to section 21, chapter 62, Laws of 2018. [2021 c 15 § 1; 2018 c 62 § 11; 2015 c 229 § 21; 2013 c 29 § 3; 2012 c 17 § 2; 2011 c 191 § 2; 2001 c 81 § 3.]

31.04.035 License required—When violation occurs.

(1) No person may make secured or unsecured loans of money or things in action, or extend credit, or service or modify the terms or conditions of residential mortgage loans, or service or modify student education loans, without first obtaining and maintaining a license in accordance with this

chapter, except those exempt under RCW 31.04.025 or not subject to licensure under RCW 31.04.420.

(2) If a transaction violates subsection (1) of this section, any:

(a) Nonthird-party fees charged in connection with the origination of the residential mortgage loan must be refunded to the borrower, excluding interest charges; and

(b) Fees or interest charged in the making of a nonresidential loan must be refunded to the borrower.

(3) The director's obligations or duties under chapter 62, Laws of 2018 are subject to section 21, chapter 62, Laws of 2018. [2018 c 62 § 12; 2013 c 29 § 4; 2010 c 35 § 2; 2009 c 120 § 4; 2008 c 78 § 2; 1991 c 208 § 3.]

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

Additional notes found at www.leg.wa.gov

31.04.045 License—Application—Background checks—Fee—Surety bond. (1) Application for a license under this chapter must be made to the nationwide mortgage licensing system and registry or in the form prescribed by the director. The application must contain at least the following information:

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

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

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

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

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

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

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

(4) Each applicant must file and maintain a surety bond, approved by the director, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, whose liability as such surety must not

exceed in the aggregate the penal sum of the bond. The penal sum of the bond must be a minimum of thirty thousand dollars and based on the annual dollar amount of loans originated or residential mortgage loans serviced. The bond must run to the state of Washington as obligee for the use and benefit of the state and of any person or persons who may have a cause of action against the obligor under this chapter. The bond must be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all the rules adopted under this chapter. The bond will pay to the state and any person or persons having a cause of action against the obligor all moneys that may become due and owing to the state and those persons under and by virtue of this chapter. The bond must be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation is effective forty-five days after the notice is received by the director. In lieu of a surety bond, if the applicant is a Washington business corporation, the applicant may maintain unimpaired capital, surplus, and long-term subordinated debt in an amount that at any time its outstanding promissory notes or other evidences of debt (other than long-term subordinated debt) in an aggregate sum do not exceed three times the aggregate amount of its unimpaired capital, surplus, and long-term subordinated debt. The director may define qualifying "long-term subordinated debt" for purposes of this section.

(5) The director may waive one or more requirements of this section or permit an applicant to submit other information in lieu of the required information. [2015 c 229 § 22; 2014 c 36 § 5; 2010 c 35 § 3; 2009 c 120 § 5; 2001 c 81 § 4; 1994 c 92 § 162; 1991 c 208 § 5.]

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

Additional notes found at www.leg.wa.gov

31.04.055 License—Director's duties. (1) The director shall issue and deliver a license to the applicant to make loans in accordance with this chapter at the location specified in the application if, after investigation, the director finds that:

(a) The applicant has paid all required fees;

(b) The applicant has submitted a complete application in compliance with RCW 31.04.045;

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

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

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

(f) Neither the applicant nor any of its principals have provided unlicensed residential mortgage loan modification

services in this state in the five years prior to the filing of the present application.

(2) If the director does not find the conditions of subsection (1) of this section have been met, the director shall not issue the license. The director shall notify the applicant of the denial and return to the applicant the bond posted and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application. The director shall approve or deny every application for license under this chapter within ninety days from the filing of a complete application with the fees and the approved bond. [2010 c 35 § 4; 2001 c 81 § 5; 1994 c 92 § 163; 1991 c 208 § 6.]

31.04.065 License—Information contained. The license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a copartnership or association, the names of its members, and if a corporation, the date and place of its incorporation. The license is not transferable or assignable. [2012 c 17 § 3; 1991 c 208 § 7.]

31.04.075 Licensee—Place of business. (1) The licensee may not maintain more than one place of business under the same license unless:

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

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

(2) Whenever a licensee wishes to change the place of business to a street address other than that reported in the nationwide mortgage licensing system and registry, the licensee must give prior written notice to the director, pay the fee, and obtain the director's approval. [2021 c 15 § 2; 2015 c 229 § 23; 2001 c 81 § 6; 1994 c 92 § 164; 1991 c 208 § 8.]

31.04.085 Licensee—Assessment—Bond—Time of payment. (1) A licensee shall, for each license held by any person, on or before the first day of each March, pay to the director an annual assessment as determined by rule by the director. The licensee shall be responsible for payment of the annual assessment for the previous calendar year if the licensee had a license for any time during the preceding calendar year, regardless of whether they surrendered their license during the calendar year or whether their license was suspended or revoked. At the same time the licensee shall file with the director the required bond or otherwise demonstrate compliance with RCW 31.04.045.

(2) The director may establish a different yearly assessment fee for persons servicing residential mortgage loans. [2010 c 35 § 5; 2001 c 81 § 7; 1994 c 92 § 165; 1991 c 208 § 9.]

31.04.093 Licensing—Applications—Regulation of licensees—Director's duties and authority—Fines—

(2021 Ed.)

Orders—Statute of limitations. (1) The director must enforce all laws and rules relating to the licensing and regulation of licensees and persons subject to this chapter. However, the director's obligation under this subsection does not arise until the rules required under RCW 31.04.405 are adopted or until January 1, 2019, whichever is sooner.

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

(a) Failure of the applicant to demonstrate within its application for a license that it meets the requirements for licensing in RCW 31.04.045 and 31.04.055;

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

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

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

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

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

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

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

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

The director may condition, revoke, or suspend only the particular license with respect to which grounds for conditioning, revocation, or suspension may occur or exist or the director may condition, revoke, or suspend all of the licenses issued to the licensee.

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

(a) Any violation of this chapter; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) A licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the licensee's civil or criminal liability, if any, for acts committed before the surrender, including any administrative action initiated by the director to suspend or revoke a license, impose fines, compel the payment of restitution to borrowers or other persons, or exercise any other

authority under this chapter. The statute of limitations on actions not subject to RCW 4.16.160 that are brought under this chapter by the director is five years.

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

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

(12) A license issued under this chapter expires upon the licensee's failure to comply with the annual assessment requirements in RCW 31.04.085, and the rules. The department must provide notice of the expiration to the address of record provided by the licensee. On the 15th day after the department provides notice, if the assessment remains unpaid, the license expires. The licensee must receive notice prior to expiration and have the opportunity to stop the expiration as set forth in rule.

(13) The director's obligations or duties under chapter 62, Laws of 2018 are subject to section 21, chapter 62, Laws of 2018. [2018 c 62 § 13; 2015 c 229 § 24; 2014 c 36 § 6; 2013 c 29 § 5; 2012 c 17 § 4; 2010 c 35 § 6; 2001 c 81 § 8; 1994 c 92 § 166; 1991 c 208 § 10.]

31.04.102 Loans secured, or not secured, by lien on real property—Licensee's obligations—Disclosure of fees and costs to borrower—Time limits. (1) For all loans made by a licensee that are not secured by a lien on real property, the licensee must make disclosures in compliance with the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Part 1026, and all other applicable federal laws and regulations.

(2) For all loans made by a licensee that are secured by a lien on real property, the licensee must provide to each borrower within three business days following receipt of a loan application a written disclosure containing an itemized estimation and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a loan from the licensee. A good faith estimate of a fee or cost must be provided if the exact amount of the fee or cost is not available when the disclosure is provided. Disclosure in a form which complies with the requirements of the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Part 1026, the real estate settlement procedures act and regulation X, 24 C.F.R. Part 1024, and all other applicable federal laws and regulations, as now or hereafter amended, constitutes compliance with this disclosure requirement. Each licensee must comply with all other applicable federal and state laws and regulations.

(3) In addition, for all loans made by the licensee that are secured by a lien on real property, the licensee must provide to the borrower an estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty within three days of receipt of a loan application. The annual percentage rate must be calculated in compliance with the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Part 1024. If a licensee provides

the borrower with a disclosure in compliance with the requirements of the truth in lending act within three business days of receipt of a loan application, then the licensee has complied with this subsection. If the director determines that the federal government has required a disclosure that substantially meets the objectives of this subsection, then the director may make a determination by rule that compliance with this federal disclosure requirement constitutes compliance with this subsection.

(4) In addition for all consumer loans made by the licensee that are secured by a lien on real property, the licensee must comply with RCW 19.144.020.

(5) In addition for all consumer loans made by a licensee that are a refinance of a federal student education loan, the licensee must provide to the borrower a clear and conspicuous disclosure that some repayment and forgiveness options available under federal student education loan programs, including without limitation income-driven repayment plans, economic hardship deferments, or public service loan forgiveness, will no longer be available to the borrower if he or she chooses to refinance federal student education loans with one or more consumer loans.

(6) The director's obligations or duties under chapter 62, Laws of 2018 are subject to section 21, chapter 62, Laws of 2018. [2018 c 62 § 14; 2015 c 229 § 27; 2013 c 29 § 6; 2009 c 120 § 6; 2002 c 346 § 1; 2001 c 81 § 9.]

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.105 Licensee—Powers—Restrictions. Every licensee may:

(1) Lend money at a rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed;

(2) In connection with the making of a loan, charge the borrower a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan;

(3) Agree with the borrower for the payment of fees to third parties other than the licensee who provide goods or services to the licensee in connection with the preparation of the borrower's loan, including, but not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies, when such fees are actually paid by the licensee to a third party for such services or purposes and may include such fees in the amount of the loan. However, no charge may be collected unless a loan is made, except for reasonable fees properly incurred for a credit report and in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender;

(4) In connection with the making of a loan secured by real estate, when the borrower actually obtains a loan, agree with the borrower to pay a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compen-

sation as a mortgage broker in connection with any loan made by the licensee;

(5) Collect at the time of the loan closing up to but not exceeding forty-five days of prepaid interest;

(6) Charge and collect a penalty of not more than ten percent of any installment payment delinquent ten days or more;

(7) Collect from the debtor reasonable attorneys' fees, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclosure when a debt is referred for collection to an attorney who is not a salaried employee of the licensee;

(8) Make open-end loans as provided in this chapter;

(9) Charge and collect a fee for dishonored checks in an amount approved by the director; and

(10) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, and covering the involuntary unemployment of the borrower. [2015 c 229 § 28; 2013 c 29 § 7; 2009 c 120 § 7; 2001 c 81 § 10; 1998 c 28 § 1; 1994 c 92 § 167; 1993 c 190 § 1; 1991 c 208 § 11.]

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.115 Open-end loan—Requirements—Restrictions—Options. (1) As used in this section, "open-end loan" means an agreement between a licensee and a borrower that expressly states that the loan is made in accordance with this chapter and that provides that:

(a) A licensee may permit the borrower to obtain advances of money from the licensee from time to time, or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;

(b) The amount of each advance and permitted charges and costs are debited to the borrower's account, and payments and other credits are credited to the same account;

(c) The charges are computed on the unpaid principal balance, or balances, of the account from time to time; and

(d) The borrower has the privilege of paying the account in full at any time without prepayment penalty or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the agreement.

(2)(a) Interest charges on an open-end loan shall not exceed twenty-five percent per annum computed in each billing cycle by any of the following methods:

(i) By converting the annual rate to a daily rate, and multiplying the daily rate by the daily unpaid principal balance of the account, in which case each daily rate is determined by dividing the annual rate by three hundred sixty-five;

(ii) By multiplying a monthly rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the monthly rate is one-twelfth of the annual rate, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; or

(iii) By converting the annual rate to a daily rate, and multiplying the daily rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the daily rate is determined by dividing the annual rate by three hundred sixty-five, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle.

For all of the methods of computation specified in this subsection (2)(a), the billing cycle shall be monthly, and the unpaid principal balance on any day shall be determined by adding to the balance unpaid, as of the beginning of that day, all advances and other permissible amounts charged to the borrower, and deducting all payments and other credits made or received that day. A billing cycle is considered monthly if the closing date of the cycle is on the same date each month, or does not vary by more than four days from that date.

(b) Reverse mortgage loans made in accordance with the Washington state reverse mortgage act are not subject to the interest charge computation restrictions or billing cycle requirements in this section.

(3) In addition to the charges permitted under subsection (2) of this section, the licensee may contract for and receive an annual fee, payable each year in advance, for the privilege of opening and maintaining an open-end loan account. Except as prohibited or limited by this section, the licensee may also contract for and receive on an open-end loan any additional charge permitted by this chapter on other loans, subject to the conditions and restrictions otherwise pertaining to those charges.

(4)(a) If credit life or credit disability insurance is provided, the additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for the insurance, at the rate approved by the insurance commissioner to the entire outstanding balances in the borrower's open-end loan account, or so much thereof as the insurance covers using any of the methods specified in subsection (2)(a) of this section for the calculation of interest charges; and

(b) The licensee shall not cancel credit life or disability insurance written in connection with an open-end loan because of delinquency of the borrower in the making of the required minimum payments on the loan, unless one or more of the payments is past due for a period of ninety days or more; and the licensee shall advance to the insurer the amounts required to keep the insurance in force during that period, which amounts may be debited to the borrower's account.

(5) A security interest in real or personal property may be taken to secure an open-end loan. Any such security interest may be retained until the open-end account is terminated. The security interest shall be promptly released if (a) there has been no outstanding balance in the account for twelve months and the borrower either does not have or surrenders the unilateral right to create a new outstanding balance; or (b) the account is terminated at the borrower's request and paid in full.

(6) The licensee may from time to time increase the rate of interest being charged on the unpaid principal balance of the borrower's open-end loans if the licensee mails or delivers written notice of the change to the borrower at least thirty days before the effective date of the increase unless the increase has been earlier agreed to by the borrower. However, the borrower may choose to terminate the open-end account and the licensee shall allow the borrower to repay the unpaid balance incurred before the effective date of the rate increase upon the existing open-end loan account terms and interest rate unless the borrower incurs additional debt on or after the

effective date of the rate increase or otherwise agrees to the new rate.

(7) The licensee shall deliver a copy of the open-end loan agreement to the borrower at the time the open-end account is created. The agreement must contain the name and address of the licensee and of the principal borrower, and must contain such specific disclosures as may be required by rule of the director. In adopting the rules the director shall consider Regulation Z promulgated by the board of governors of the federal reserve system under the federal consumer credit protection act.

(8) Except in the case of an account that the licensee deems to be uncollectible, or with respect to which delinquency collection procedures have been instituted, the licensee shall deliver to the borrower at the end of each billing cycle in which there is an outstanding balance of more than one dollar in the account, or with respect to which interest is imposed, a periodic statement in the form required by the director. In specifying such form the director shall consider Regulation Z promulgated by the board of governors of the federal reserve system under the federal consumer credit protection act. [2009 c 149 § 13; 1994 c 92 § 168; 1993 c 405 § 1; 1991 c 208 § 12.]

31.04.125 Loan restrictions—Interest calculations.

(1) No licensee may make a loan using any method of calculating interest other than the simple interest method; except that the add-on method of calculating interest may be used for a loan not secured by real property or personal property used as a residence when the repayment period does not exceed three years and fifteen days after the loan origination date.

(2) No licensee may make a loan using the add-on method to calculate interest that does not provide for a refund to the borrower or a credit to the borrower's account of any unearned interest when the loan is repaid before the original maturity date in full by cash, by a new loan, by refinancing, or otherwise before the final due date. The refund must be calculated using the actuarial method, unless a sum equal to two or more installments has been prepaid and the account is not in arrears and continues to be paid ahead, in which case the interest on the account must be recalculated by the simple interest method with the refund of unearned interest made as if the loan had been made using the simple interest method. When computing an actuarial refund, the lender may round the annual rate used to the nearest quarter of one percent.

In computing a required refund of unearned interest, a prepayment made on or before the fifteenth day after the scheduled payment date is deemed to have been made on the payment date preceding the prepayment. In the case of prepayment before the first installment due date, the company may retain an amount not to exceed one-thirtieth of the first month's interest charge for each day between the origination date of the loan and the actual date of prepayment.

(3) No licensee may provide credit life or disability insurance in an amount greater than that required to pay off the total balance owing on the date of the borrower's death net of refunds in the case of credit life insurance, or all minimum payments that become due on the loan during the covered period of disability in the case of credit disability insurance. The lender may not require any such insurance.

(4) Except in the case of loans by mail, where the borrower has sufficient time to review papers before returning them, no licensee may prepare loan papers in advance of the loan closing without having reviewed with the borrower the terms and conditions of the loan to include the type and amount of insurance, if any, requested by the borrower. [2007 c 208 § 1; 1995 c 9 § 1; 1991 c 208 § 13.]

31.04.135 Advertisements or promotions. No licensee may advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever, any statement or representation with regard to the rates, terms, or conditions for the lending of money that is false, misleading, or deceptive. [1991 c 208 § 14.]

31.04.143 Subpoena authority—Application—Contents—Notice—Fees. (1) The director or authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

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

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

(3) The director or authorized assistants may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3). [2011 c 93 § 9.]

Finding—Intent—2011 c 93: See note following RCW 18.44.425.

31.04.145 Investigations and examinations—Director's duties and powers—Production of information—Costs. (1) For the purpose of discovering violations of this chapter or securing information lawfully required under this chapter, the director may at any time, either personally or by designees, investigate or examine the loans and business and, wherever located, the books, accounts, records, papers, documents, files, and other information used in the business of every licensee and of every person subject to this chapter, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter. The director or designated representative:

- (a) Must have free access to the employees, offices, and places of business, books, accounts, papers, documents, other

information, records, files, safes, and vaults of all such persons during normal business hours;

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

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

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

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

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

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

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

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

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

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

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

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

(5) The director's obligations or duties under chapter 62, Laws of 2018 are subject to section 21, chapter 62, Laws of 2018. [2018 c 62 § 15; 2015 c 229 § 29; 2012 c 17 § 5; 2009 c 120 § 8; 2001 c 81 § 11; 1995 c 9 § 2; 1994 c 92 § 169; 1991 c 208 § 15.]

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.155 Licensee—Recordkeeping—Director's access—Report requirement—Failure to report. The licensee shall keep and use in the business such books, accounts, records, papers, documents, files, and other information as will enable the director to determine whether the licensee is complying with this chapter and with the rules adopted by the director under this chapter. The director shall have free access to such books, accounts, records, papers, documents, files, and other information wherever located. Every licensee shall preserve the books, accounts, records, papers, documents, files, and other information relevant to a loan for at least three years after making the final entry on any loan. No licensee or person subject to examination or investigation under this chapter shall withhold, abstract, remove, mutilate, destroy, or secrete any books, accounts, records, papers, documents, files, or other information.

Each licensee shall, on or before the first day of March of each year, file a report with the director giving such relevant information as the director may reasonably require concerning the business and operations of each licensed place of business conducted during the preceding calendar year. The report must be made under oath and must be in the form prescribed by the director, who shall make and publish annually an analysis and recapitulation of the reports. Every licensee that fails to file a report that is required to be filed by this chapter within the time required under this chapter is subject to a penalty of fifty dollars per day for each day's delay. The attorney general may bring a civil action in the name of the state for recovery of any such penalty. [2013 c 29 § 8; 2001 c 81 § 12; 1994 c 92 § 170; 1991 c 208 § 16.]

31.04.165 Director—Broad administrative discretion—Rule making—Actions in superior court. (1) The director has the power, and broad administrative discretion, to administer and interpret this chapter to facilitate the delivery of financial services to the citizens of this state by persons subject to this chapter. The director shall adopt all rules necessary to administer this chapter and to ensure complete and full disclosure by licensees of lending transactions governed by this chapter.

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

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

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

(5) The director's obligations or duties under chapter 62, Laws of 2018 are subject to section 21, chapter 62, Laws of 2018. [2018 c 62 § 16; 2010 c 35 § 7; 2009 c 120 § 30; 2001 c 81 § 13; 1994 c 92 § 171; 1991 c 208 § 17.]

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.168 Director—Powers under chapter 19.144 RCW. The director or the director's designee may take such action as provided for in this chapter to enforce, investigate, or examine persons covered by chapter 19.144 RCW. [2008 c 108 § 16.]

Findings—2008 c 108: See RCW 19.144.005.

31.04.175 Violations—No penalty prescribed—Gross misdemeanor—Good faith exception. (1) A person who violates, or knowingly aids or abets in the violation of any provision of this chapter, for which no penalty has been prescribed, and a person who fails to perform any act that it is his or her duty to perform under this chapter and for which failure no penalty has been prescribed, is guilty of a gross misdemeanor.

(2) No provision imposing civil penalties or criminal liability under this chapter or rule adopted under this chapter applies to an act taken or omission made in good faith in conformity with a written notice, interpretation, or examination report of the director or his or her agent. [2001 c 81 § 14; 1994 c 92 § 172; 1991 c 208 § 18.]

31.04.202 Application of administrative procedure act. The proceedings for denying license applications, issuing cease and desist orders, suspending or revoking licenses, and imposing civil penalties or other remedies under this chapter, and any review or appeal of such action, shall be governed by the provisions of the administrative procedure act, chapter 34.05 RCW. [2001 c 81 § 15.]

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

(2) The director may recover the state's costs and expenses for prosecuting violations of this chapter including staff time spent preparing for and attending administrative hearings and reasonable attorneys' fees unless, after a hearing, the director determines no violation occurred. [2015 c 229 § 30; 2001 c 81 § 16.]

31.04.208 Application of consumer protection act. The legislature finds that the practices governed by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any violation of this chapter is not reasonable in rela-

tion to the development and preservation of business and is an unfair and deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive. [2001 c 81 § 17.]

31.04.211 Application of chapter—2009 c 120. The authority of this chapter remains in effect, whether such a licensee, individual, or person subject to chapter 120, Laws of 2009 acts or claims to act under any licensing or registration law of this state, or claims to act without such an authority. [2009 c 120 § 9.]

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.221 Mortgage loan originator—License required—Unique identifier required. An individual defined as a mortgage loan originator must not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under this chapter. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system. [2015 c 229 § 31; 2013 c 29 § 9; 2009 c 120 § 10.]

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.224 Licensing exemptions—Residential mortgage loans. The following are exempt from licensing as mortgage loan originators under this chapter:

(1) Registered mortgage loan originators, or any individual required to be registered while actively employed by a covered financial institution as defined in regulation G, 12 C.F.R. Part 1007.102;

(2) An attorney licensed in Washington who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of a lender, mortgage broker, or other mortgage loan originator;

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

(4) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence. [2015 c 229 § 32; 2012 c 17 § 6; 2009 c 120 § 11.]

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.227 Mortgage loan origination—Independent contractors. An independent contractor may not engage in residential mortgage loan origination activities as a loan processor unless the independent contractor obtains and maintains a license under this chapter. Each independent contractor *loan processor licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the nationwide mortgage licensing system **and registry. [2009 c 120 § 12.]

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Reviser's note: *(1) The term "loan processor" was changed to "loan processor or underwriter" by 2013 c 29 § 1.

** (2) The term "and registry" was removed by 2013 c 29 § 1.

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.231 Individual loan processor—Licensing exemptions. An individual engaging solely in *loan processor activities, who does not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such an individual can or will perform any of the activities of a mortgage loan originator is not required to obtain and maintain a mortgage loan originator license under this chapter. [2009 c 120 § 13.]

***Reviser's note:** The term "loan processor" was changed to "loan processor or underwriter" by 2013 c 29 § 1.

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.234 Mortgage loan originator license—Application form and content. Applicants for a mortgage loan originator license shall apply on a form as prescribed by the director. Each form must contain content as set forth by rule, regulation, instruction, or procedure of the director and may be changed or updated as necessary by the director in order to carry out the purposes of this chapter, but must not be inconsistent with that required by the nationwide mortgage licensing system *and registry. [2009 c 120 § 14.]

***Reviser's note:** The term "and registry" was removed by 2013 c 29 § 1.

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.237 Use of nationwide mortgage licensing system and registry. In order to fulfill the purposes of chapter 120, Laws of 2009, the director is authorized to establish relationships or contracts with the nationwide mortgage licensing system *and registry or other entities designated by the nationwide mortgage licensing system *and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter. [2009 c 120 § 15.]

***Reviser's note:** The term "and registry" was removed by 2013 c 29 § 1.

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.241 Mortgage loan originator application—Required submission and use of personal information.

(1) As part of or in connection with an application for any license under this section, or periodically upon license renewal, the mortgage loan originator applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, the nationwide mortgage licensing system *and registry, or any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, or periodically upon license renewal, the director is

authorized to receive criminal history record information that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles **30, 32, and 33 RCW.

(2) As part of or in connection with an application for any license under this section, the mortgage loan originator applicant shall furnish information pertaining to personal history and experience in a form prescribed by the nationwide mortgage licensing system *and registry, including (a) the submission of authorization for the nationwide mortgage licensing system *and registry and the director to obtain an independent credit report obtained from a consumer reporting agency described in section 603(p) of the federal fair credit reporting act, and (b) information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) In order to reduce the points of contact which the federal bureau of investigation may have to maintain, the director may use the nationwide mortgage licensing system *and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.

(4) In order to reduce the points of contact which the director may have to maintain, the director may use the nationwide mortgage licensing system *and registry as a channeling agent for requesting and distributing information to and from any source so directed by the director. [2009 c 120 § 16.]

Reviser's note: *(1) The term "and registry" was removed by 2013 c 29 § 1.

***(2) Title 30 RCW was recodified and/or repealed pursuant to 2014 c 37, effective January 5, 2015.

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.244 Mortgage loan originator application—Required information—Fees. (1) The application for a mortgage loan originator license must contain at least the following information:

(a) The name, address, date of birth, and social security number of the mortgage loan originator applicant, and any other names, dates of birth, or social security numbers previously used by the mortgage loan originator applicant, unless waived by the director; and

(b) Other information regarding the mortgage loan originator applicant's background, experience, character, and general fitness as the director may require by rule, or as deemed necessary by the nationwide mortgage licensing system *and registry.

(2) At the time of filing an application for a license or a license renewal under this chapter, each mortgage loan originator applicant shall pay to the director through the nationwide mortgage licensing system *and registry the application or renewal fee of up to one hundred fifty dollars. The director shall deposit the moneys in the financial services regulation fund. [2009 c 120 § 17.]

*Reviser's note: The term "and registry" was removed by 2013 c 29 § 1.

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.247 Issuance of mortgage loan originator license—Necessary findings. (1) The director must issue and deliver a mortgage loan originator license if, after investigation, the director makes at a minimum the following findings:

(a) The applicant has paid the required license fees;
(b) The applicant has met the requirements of this chapter;

(c) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that, for the purposes of this subsection, a subsequent formal vacation of such revocation is not a revocation;

(d) The applicant has not been convicted of a gross misdemeanor involving dishonesty or financial misconduct or has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court (i) during the seven-year period preceding the date of the application for licensing and registration; or (ii) at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering;

(e) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of chapter 120, Laws of 2009. For the purposes of this section, an applicant has not demonstrated financial responsibility when the applicant shows disregard in the management of his or her financial condition. A determination that an individual has shown disregard in the management of his or her financial condition may include, but is not limited to, an assessment of: Current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or other government liens and filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years;

(f) The applicant has completed the prelicensing education requirement as required by this chapter;

(g) The applicant has passed a written test that meets the test requirement as required by this chapter;

(h) The consumer loan licensee that the applicant works for has met the surety bond requirement as required by this chapter;

(i) The applicant has not been found to be in violation of this chapter or rules adopted under this chapter;

(j) The mortgage loan originator licensee has completed, during the calendar year preceding a licensee's annual license renewal date, continuing education as required by this chapter.

(2) If the director finds the conditions of this section have not been met, the director must not issue the mortgage loan originator license. The director must notify the applicant of the denial and return to the mortgage loan originator applicant any remaining portion of the license fee that exceeds the department's actual cost to investigate the license. [2015 c 229 § 33; 2009 c 120 § 18.]

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.251 Mortgage loan originator license—Renewal—Surrender—Rules. (1) A mortgage loan originator license issued under this section expires annually. The director shall establish rules regarding the mortgage loan originator license renewal process created under this chapter. At a minimum a mortgage loan originator may not renew a license under this chapter unless the mortgage loan originator continues to meet the minimum standards for a license, and has satisfied the annual continuing education requirements.

(2) A mortgage loan originator licensee may surrender a license by delivering to the director through the nationwide mortgage licensing system *and registry written notice of surrender, but the surrender does not affect the mortgage loan originator licensee's civil or criminal liability or any administrative actions arising from acts or omissions occurring before such a surrender. [2009 c 120 § 19.]

**Reviser's note:* The term "and registry" was removed by 2013 c 29 § 1.

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.254 Mortgage loan originator licensing process—Rules—Interim procedures. For the purposes of implementing an orderly and efficient mortgage loan originator licensing process, the director may establish licensing rules and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals the director may establish expedited review and licensing procedures. [2009 c 120 § 20.]

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.257 Mortgage loan originator interim license. To prevent undue delay in the issuance of a mortgage loan originator license and to facilitate the business of a mortgage loan originator, an interim license with a fixed date of expiration may be issued when the director determines that the mortgage loan originator has substantially fulfilled the requirements for mortgage loan originator licensing. The director may adopt rules describing the information required before an interim license can be granted. [2009 c 120 § 21.]

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.261 Mortgage loan originator—Prelicensing education requirements. (1) Each mortgage loan originator applicant shall complete at least twenty hours of prelicensing education approved by the nationwide mortgage licensing system *and registry. The prelicensing education shall include at least three hours of federal law and regulations; three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; two hours of training related to lending standards for the nontraditional mortgage product marketplace; and at least two hours of training specifically related to Washington law.

(2) A mortgage loan originator applicant having successfully completed the prelicensing education requirements approved by the nationwide mortgage licensing system *and registry for any state shall be accepted as credit towards completion of prelicensing education requirements in this state.

(3) This chapter does not preclude any prelicensing education course, as approved by the nationwide mortgage

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licensing system *and registry, that is provided by the employer of the mortgage loan originator applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such an employer or entity. Prelicensing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system *and registry. [2009 c 120 § 22.]

**Reviser's note:* The term "and registry" was removed by 2013 c 29 § 1.

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.264 Mortgage loan originator—Testing requirements. (1) To obtain a mortgage loan originator license, an individual must pass a test developed by the nationwide mortgage licensing system *and registry and administered by a test provider approved by the nationwide mortgage licensing system *and registry based upon reasonable standards.

(2) An individual is not considered to have passed a test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.

(a) An individual may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test.

(b) After failing three consecutive tests, an individual must wait at least six months before taking the test again.

(c) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer must retake the test, not taking into account any time during which that individual is a registered mortgage loan originator.

(3) This section does not prohibit a test provider approved by the nationwide mortgage licensing system *and registry from providing a test at the location of the employer of the mortgage loan originator applicant or any subsidiary or affiliate of the employer of the applicant, or any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator. [2009 c 120 § 23.]

**Reviser's note:* The term "and registry" was removed by 2013 c 29 § 1.

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.267 Mortgage loan originator—Continuing education requirements. (1) A licensed mortgage loan originator must complete a minimum of eight hours of continuing education approved by the nationwide mortgage licensing system *and registry which must include at least three hours of federal law and regulations; two hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; and two hours of training related to lending standards for the nontraditional mortgage product marketplace. Additionally, the director may require at least one hour of continuing education on Washington law provided by and administered through an approved provider.

(2) The nationwide mortgage licensing system *and registry must review and approve continuing education courses. Review and approval of a continuing education course must include review and approval of the course provider.

(3) A licensed mortgage loan originator may only receive credit for a continuing education course in the year in

which the course is taken, and may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) A licensed mortgage loan originator who is an instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(5) A person having successfully completed the education requirements approved by the nationwide mortgage licensing system *and registry for any state must have their credits accepted as credit towards completion of continuing education requirements in this state.

(6) This section does not preclude any education course, as approved by the nationwide mortgage licensing system *and registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity. Continuing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system *and registry. [2009 c 120 § 24.]

***Reviser's note:** The term "and registry" was removed by 2013 c 29 § 1.

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.271 Mortgage loan originators—System information may be challenged. The director shall establish a process whereby mortgage loan originators may challenge information entered into the nationwide mortgage licensing system *and registry by the director. [2009 c 120 § 25.]

***Reviser's note:** The term "and registry" was removed by 2013 c 29 § 1.

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.274 Information provided to nationwide mortgage licensing system and registry—Confidentiality—Restrictions on sharing. (1) Except as otherwise provided in section 1512 of the S.A.F.E. act, the requirements under any federal law or chapter 42.56 RCW regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system *and registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to that information or material, continues to apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system *and registry. Information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or state law.

(2) For the purposes under subsection (1) of this section, the director is authorized to enter agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing governmental agencies as established by rule, regulation, or order of the director.

(3) Information or material that is subject to a privilege or confidentiality under subsection (1) of this section is not subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process unless, with respect to any privilege held by the nationwide mortgage licensing system *and registry with respect to that information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of that person, that privilege.

(4) Chapter 42.56 RCW relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) of this section that is inconsistent with subsection (1) of this section is superseded by the requirements of this section.

(5) This section does not apply to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the nationwide mortgage licensing system *and registry for access by the public. [2009 c 120 § 26.]

***Reviser's note:** The term "and registry" was removed by 2013 c 29 § 1.

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.277 Consumer loan companies—When reports of condition are required. Each consumer loan company licensee must submit call reports through the nationwide mortgage licensing system in a form and containing the information prescribed by the director or as deemed necessary by the nationwide mortgage licensing system.

The director's obligations or duties under chapter 62, Laws of 2018 are subject to section 21, chapter 62, Laws of 2018. [2018 c 62 § 17; 2015 c 229 § 34; 2010 c 35 § 8; 2009 c 120 § 27.]

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.281 Reports of violation—2009 c 120. The director is authorized to regularly report violations of chapter 120, Laws of 2009, as well as enforcement actions and other relevant information, to the nationwide mortgage licensing system *and registry. [2009 c 120 § 28.]

***Reviser's note:** The term "and registry" was removed by 2013 c 29 § 1.

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.284 Mortgage loan originator—Unique identifier—Display. The unique identifier of any mortgage loan originator must be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or web sites, and any other documents as established by rule, regulation, or order of the director. This section does not apply to consumer loan company licensees. [2009 c 120 § 29.]

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.290 Residential mortgage loan servicer—Requirements—Written detailed information. (1) A resi-

dential mortgage loan servicer must comply with the following requirements:

(a) Any fee that is assessed by a servicer must be assessed within forty-five days of the date on which the fee was incurred and must be explained clearly and conspicuously in a statement mailed to the borrower at the borrower's last known address no more than thirty days after assessing the fee;

(b) All amounts received by a servicer on a residential mortgage loan at the address where the borrower has been instructed to make payments must be accepted and credited, or treated as credited, within one business day of the date received, provided that the borrower has provided sufficient information to credit the account. If a servicer uses the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date must be credited no later than the due date. If any payment is received and not credited, or treated as credited, the borrower must be notified of the disposition of the payment within ten business days by mail at the borrower's last known address. The notification must identify the reason the payment was not credited or treated as credited to the account, as well as any actions the borrower must take to make the residential mortgage loan current;

(c) Any servicer that exercises the authority to collect escrow amounts on a residential mortgage loan held for the borrower for payment of insurance, taxes, and other charges with respect to the property must collect and make all such payments from the escrow account and ensure that no late penalties are assessed or other negative consequences result for the borrower;

(d) The servicer must make reasonable attempts to comply with a borrower's request for information about the residential mortgage loan account and to respond to any dispute initiated by the borrower about the loan account. The servicer:

(i) Must maintain written or electronic records of each written request for information regarding a dispute or error involving the borrower's account until the residential mortgage loan is paid in full, sold, or otherwise satisfied; and

(ii) Must provide a written statement to the borrower within fifteen business days of receipt of a written request from the borrower. The borrower's request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and sufficient detail regarding the information sought by the borrower to permit the servicer to comply. At a minimum, the servicer's response to the borrower's request must include the following information:

(A) Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default;

(B) The current balance due on the residential mortgage loan, including the principal due, the amount of funds, if any, held in a suspense account, the amount of the escrow balance known to the servicer, if any, and whether there are any escrow deficiencies or shortages known to the servicer;

(C) The identity, address, and other relevant information about the current holder, owner, or assignee of the residential mortgage loan; and

(D) The telephone number and mailing address of a servicer representative with the information and authority to answer questions and resolve disputes; and

(e) Promptly correct any errors and refund any fees assessed to the borrower resulting from the servicer's error.

(2) In addition to the statement in subsection (1)(d)(ii) of this section, a borrower may request more detailed information from a servicer, and the servicer must provide the information within fifteen business days of receipt of a written request from the borrower. The request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and provide sufficient detail to the servicer regarding information sought by the borrower. If requested by the borrower this statement must include:

(a) A copy of the original note, or if unavailable, an affidavit of lost note; and

(b) A statement that identifies and itemizes all fees and charges assessed under the loan transaction and provides a full payment history identifying in a clear and conspicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the borrower, and other activity on the residential mortgage loan including escrow account activity and suspense account activity, if any. The period of the account history must cover at a minimum the two-year period prior to the date of the receipt of the request for information. If the servicer has not serviced the residential mortgage loan for the entire two-year time period the servicer must provide the information going back to the date on which the servicer began servicing the home loan, and identify the previous servicer, if known. If the servicer claims that any delinquent or outstanding sums are owed on the home loan prior to the two-year period or the period during which the servicer has serviced the residential mortgage loan, the servicer must provide an account history beginning with the month that the servicer claims any outstanding sums are owed on the residential mortgage loan up to the date of the request for the information. The borrower may request annually one statement free of charge. [2015 c 229 § 35; 2013 c 29 § 10; 2010 c 35 § 9.]

31.04.293 Residential mortgage loan modification services—Written disclosure summary—Limitation on fees—Rules. (1) In addition to any other requirements under federal or state law, an advance fee may not be collected for residential mortgage loan modification services.

(2) A written disclosure summary of all material terms of the services to be provided must be provided to the borrower.

(3) The department shall adopt by rule a model written disclosure summary, and any other rules necessary to implement this section. This may include, but is not limited to, usual and customary fees for residential mortgage loan modification services. [2013 c 29 § 11; 2010 c 35 § 10.]

31.04.297 Third-party residential mortgage loan modification services providers—Duties—Restrictions.

(1) In addition to complying with federal law and all requirements for loan originators under this chapter, third-party residential mortgage loan modification services providers must:

(a) Provide a written disclosure summary as described in RCW 31.04.293;

(b) Not receive advance fees;

(c) Not charge total fees in excess of usual and customary charges, or total fees that are not reasonable in light of the service provided; and

(d) Immediately inform the borrower in writing if the owner of the loan requires additional information from the borrower, or if it becomes apparent that a residential mortgage loan modification is not possible.

(2) As a condition for providing a loan modification or loan modification services, third-party residential mortgage loan modification services providers and individuals servicing a residential mortgage loan must not require or encourage a borrower to:

(a) Sign a waiver of his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;

(b) Sign a waiver of his or her right to contest a future foreclosure;

(c) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(d) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan; or

(e) Cease communication with the lender, investor, or loan servicer.

(3) Failure to comply with subsection (1) of this section is a violation of RCW 19.144.080. [2013 c 29 § 12; 2010 c 35 § 11.]

31.04.300 Residential mortgage loan servicer—Liquidity, operating reserves, tangible net worth requirements. (1) A residential mortgage loan servicer licensee must maintain liquidity, operating reserves, and a tangible net worth in accordance with generally accepted accounting principles as determined by the director. The director may adopt rules to interpret this subsection.

(2) A residential mortgage loan servicer that is a Fannie Mae or Freddie Mac-approved servicer meets the requirements of subsection (1) of this section if the liquidity, operating reserves, and tangible net worth each meet the standards of the government-sponsored enterprise for which they are approved. For loans serviced that would not otherwise be subject to the liquidity, operating reserves, and tangible net worth requirements of Fannie Mae or Freddie Mac, the residential mortgage loan servicer must maintain liquidity, operating reserves, and tangible net worth consistent with the highest standards of the government-sponsored entity or entities for which they are approved.

(3) If a licensee's liquidity, operating reserves, or tangible net worth fall below the amount required under subsection (1) or (2) of this section, the director or the director's designee may initiate an action. [2015 c 229 § 25.]

31.04.310 Residential mortgage or student education loan servicer—Appointment of receiver. Upon application by the director and upon a showing that the interests of borrowers or creditors so requires, the superior court may appoint a receiver to take over, operate, or liquidate any residential mortgage or student education loan servicer.

The director's obligations or duties under chapter 62, Laws of 2018 are subject to section 21, chapter 62, Laws of 2018. [2018 c 62 § 18; 2015 c 229 § 26.]

31.04.400 Program for student education loan servicers—Student achievement council's student loan advocate—Costs—Fees. (1) The director shall establish fees by rule sufficient to cover the costs of administering the department's program for student education loan servicers and the student achievement council's student loan advocate. These fees may include:

(a) An annual assessment specified in rule by the director paid by each licensee on or before the annual assessment due date;

(b) A late fee for late payment of the annual assessment as specified in rule by the director;

(c) Hourly investigation and examination fees to cover the costs of any investigation or examination of the books and records of a licensee or other person subject to this chapter;

(d) A nonrefundable application fee to cover the costs of processing license applications made to the director under this chapter;

(e) An initial license fee to cover the period from the date of licensure to the end of the calendar year in which the license is initially granted; and

(f) A transaction fee or set of transaction fees to cover the administrative costs associated with processing changes in control, changes of address, and other administrative changes as specified in rule by the director.

(2) The director shall ensure that when an examination or investigation, or any part of the examination or investigation, of any licensee applicant or person subject to licensing under this chapter requires travel and services outside this state by the director or designee, the licensee applicant or person subject to licensing under this chapter that is the subject of the examination or investigation shall pay the actual travel expenses incurred by the director or designee conducting the examination or investigation.

(3) All moneys, fees, and penalties collected for the department's program for student education loan servicing shall be deposited into the financial services regulation fund, except as provided in RCW 43.320.110.

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

31.04.405 Requirements for a student education loan servicer—Borrower request for information—Transfer of service rights—Records—Rules—Director's obligations. (1) In addition to complying with any applicable federal program requirements, a student education loan servicer must comply with the following requirements:

(a) Any fee that is assessed by a servicer must be assessed within forty-five days of the date on which the fee was incurred and must be explained clearly and conspicuously in a statement mailed to the borrower at the borrower's last known address no more than thirty days after assessing the fee, or provided via email if the borrower has assented to receive electronic communications;

(b) All amounts received by a servicer on a student education loan at the address where the borrower has been

instructed to make payments must be accepted and credited, or treated as credited, within one business day of the date received, provided that the borrower has provided sufficient information to credit the account. If a servicer uses the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date must be credited no later than the due date. If any payment is received and not credited, or treated as credited, the borrower must be notified of the disposition of the payment within ten business days by mail at the borrower's last known address. The notification must identify the reason the payment was not credited or treated as credited to the account, as well as any actions the borrower must take to make the student education loan current;

(c) The servicer must make reasonable attempts to comply with a borrower's request for information about the student education loan account and to respond to any dispute initiated by the borrower about the loan account. The servicer:

(i) Must maintain written or electronic records of each written request for information regarding a dispute or error involving the borrower's account until the student education loan is paid in full, sold, or otherwise satisfied; and

(ii) Must provide a written statement to the borrower within fifteen business days of receipt of a written request from the borrower. The borrower's request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and sufficient detail regarding the information sought by the borrower to permit the servicer to comply. At a minimum, the servicer's response to the borrower's request must include the following information:

(A) Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default;

(B) The current balance due on the student education loan, including the principal due, the amount of funds, if any, held in a suspense account, if any, and whether there are any shortages known to the servicer;

(C) The identity, address, and other relevant information about the current holder, owner, or assignee of the student education loan; and

(D) The telephone number and mailing address of a servicer representative with the information and authority to answer questions and resolve disputes;

(d) Promptly correct any errors and refund any fees assessed to the borrower resulting from the servicer's error; and

(e) In the event that a borrower applies for or attempts to certify progress toward a discharge or refund of amounts paid on their federal student education loans with the United States department of education, the servicer must provide explanations to the borrower on any decision made with respect to their application.

(2) In addition, a borrower may request more detailed information from a servicer, and the servicer must provide the information within fifteen business days of receipt of a written request from the borrower. The request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and provide sufficient detail to the servicer regarding information sought by the borrower. If requested by the borrower this statement must include:

(a) A copy of the original note, or if unavailable, an affidavit of lost note; and

(b) A statement that identifies and itemizes all fees and charges assessed under the loan transaction and provides a full payment history identifying in a clear and conspicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the borrower, and other activity on the student education loan including suspense account activity, if any. The period of the account history must cover at a minimum the two-year period prior to the date of the receipt of the request for information. If the servicer has not serviced the student education loan for the entire two-year time period the servicer must provide the information going back to the date on which the servicer began servicing the loan, and identify the previous servicer, if known. If the servicer claims that any delinquent or outstanding sums are owed on the loan prior to the two-year period or the period during which the servicer has serviced the student education loan, the servicer must provide an account history beginning with the month that the servicer claims any outstanding sums are owed on the student education loan up to the date of the request for the information. The borrower may request annually one statement free of charge.

(3) When acquiring servicing rights from another servicer, a receiving servicer must:

(a) Notify the student education loan borrowers no more than sixty days and no less than forty-five days before the effective date of the transfer of the students' loans to provide them with:

(i) The effective date of the transfer of servicing, and the date at which the receiving servicer will begin to accept payments relating to the loan, if different;

(ii) The name, address, and toll-free telephone number for both the transferring and receiving servicers' designated points of contact at which the borrower can obtain answers to inquiries;

(iii) A statement that the transfer of servicing does not affect any term or condition of the student education loan other than the entity servicing the loan;

(iv) Information about how to obtain a payment history from both the transferring or receiving servicer, including a count of payments that qualify toward any forgiveness options, as applicable;

(v) A notification indicating whether an alternative repayment plan or loan consolidation application is pending; and

(vi) Information about how to appropriately direct and submit a complaint to the United States department of education, the student loan advocate, federal student loan ombuds, and other relevant federal agencies that collect borrower complaints, in the event of a servicing error;

(b) Continue processing loan modification requests, including applications for income-driven repayment, loan forgiveness, or loan consolidation, received by the receiving servicer or the transferring servicer during the transfer process; and

(c) Retain records necessary to maintain the borrower's uninterrupted enrollment in their existing repayment plan.

(4) When transferring or selling the servicing of loans a transferring servicer must:

(a) Notify the student education loan borrowers no more than sixty days and no less than forty-five days before the effective date of the transfer of the students' loans to provide them with:

(i) The effective date of the transfer of servicing, and the date at which the transferring servicer will no longer accept payments relating to the loan, if different;

(ii) The name, address, and toll-free telephone number for the transferring and receiving servicers' designated points of contact at which the borrower can obtain answers to inquiries; and

(iii) A statement that the transfer of servicing does not affect any term or condition of the student education loan other than the entity servicing the loan; and

(b) Inform the receiving servicer if a loan modification request is pending.

(5) Licensees shall provide, free of charge on the licensee's web site, information or links to information regarding repayment and loan forgiveness options that may be available to borrowers, as well as the availability of the student loan advocate to provide assistance. This information or these links shall be prominently placed and provided via written correspondence or email with the borrower at least once per calendar year.

(6) In addition to keeping records in compliance with this chapter and RCW 28B.77.007, licensees shall collect, maintain, and report to the department specific information about the loans in the licensee's portfolio. Such information shall include, but not be limited by: Loan volume, default, refinance and modification information, loan type (subsidized, deferred, etc.) information, and collection practices.

(7) The director may adopt all rules necessary to implement this section. The director may, at his or her discretion, waive applicability of the provisions of this section when the director determines it necessary to facilitate commerce and protect consumers.

(8) The director's obligations or duties under chapter 62, Laws of 2018 are subject to section 21, chapter 62, Laws of 2018. [2018 c 62 § 6.]

31.04.410 Student education loan servicer licensee.

A student education loan servicer licensee must maintain liquidity, operating reserves, and a tangible net worth in accordance with generally accepted accounting principles as determined by the director. The director may adopt rules to implement this section. The director's obligations or duties under this section are subject to section 21, chapter 62, Laws of 2018. [2018 c 62 § 7.]

31.04.415 Third-party student education loan modification services—Restrictions—Requirements. (1) In addition to complying with federal and state law, including all requirements under chapter 18.28 RCW and this chapter, any person providing third-party student education loan modification services must:

(a) Not charge or receive any money or other valuable consideration prior to full and complete performance of the services the person has agreed to perform for the borrower;

(b) Not charge total fees in excess of usual and customary charges, or total fees that are not reasonable in light of the service provided; and

(c) Immediately inform the borrower in writing if the owner or servicer of the student education loan requires additional information or documentation from the borrower, or if it becomes apparent that a modification, refinancing, consolidation, or change in repayment plans on the student education loan is not possible.

(2) As a condition for providing third-party student education loan modification services, a person providing the services shall not:

(a) Require or encourage a borrower to sign a waiver of his or her legal defenses, counterclaims, and other legal rights against the person for future acts;

(b) Represent, expressly or by implication, that funds paid to the person providing third-party student education loan modification services will be applied to the borrower's student education loan balance;

(c) Require or encourage a borrower to waive his or her right to receive notice before the owner or servicer of the loan initiates collection proceedings;

(d) Require or encourage a borrower to agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan;

(e) Require or encourage a borrower to:

(i) Cease communication with the lender, investor, loan servicer, or United States department of education; or

(ii) Change his or her contact information to that of the third-party education loan servicer or any other third party;

(f) Misrepresent, expressly or by implication, the availability, performance, cost, or characteristics of any alternative to for-profit third-party student education loan modification services through which the consumer can obtain assistance with refinancing of, consolidation of, application for discharge of or refund of amounts paid toward, or change of repayment plans for a student education loan, including communicating directly with the servicer, applying through or communicating with the United States department of education, communicating with any other government agency, or using any nonprofit agency or program;

(g) Misrepresent, expressly or by implication, the amount of money or the percentage of the debt amount a student education loan borrower may save by engaging the person's third-party student education loan modification services;

(h) Misrepresent, expressly or by implication, the total cost to purchase the third-party student education loan modification services;

(i) Misrepresent, expressly or by implication, the terms, conditions, limitations, contingencies, or requirements to reapply or recertify eligibility for any refinancing of, consolidation of, or change of repayment plans for a student education loan;

(j) Misrepresent, expressly or by implication, any affiliation, connection, or relationship with the United States department of education or its contracted entities;

(k) Misrepresent, expressly or by implication, the impact on a borrower's credit history, score, or report that will result from engaging the person's third-party student education loan modification services; or

(l) Change a borrower's login information, personal identification number, or contact information on file with a servicer or the United States department of education, including

without limitation telephone number, address, and email address.

(3) In any inconsistency between this chapter and chapter 18.28 RCW, this chapter shall control. [2018 c 62 § 8.]

31.04.420 Subject to student education loan servicer requirements—Exempt from licensing. (1) The following are subject to the student education loan servicer requirements in this chapter, but are exempt from having to obtain and maintain a license in accordance with this chapter:

(a) Trade, technical, vocational, or apprentice programs that teach skills related to a specific job, and postsecondary schools that service their own student education loans;

(b) Persons servicing five or fewer student education loans;

(c) Guarantors of federal student loans that do not also service federal student loans;

(d) The United States or any department or agency thereof, to the extent it is servicing student education loans that it originated; and

(e) Any state, county, city, or any department or agency thereof, but only to the extent it is servicing student education loans that it originated.

(2) Persons providing third-party student education loan modification services are exempt from having to obtain and maintain a license in accordance with this chapter.

(3) The department may refer to the attorney general's consumer protection division complaints regarding entities subject to this section. [2018 c 62 § 10.]

31.04.430 Dog or cat purchase contracts. A contract entered into on or after July 28, 2019, for the payment to repay a loan for the purchase of a live dog or cat, where a security interest is granted in the dog or cat, is void and unenforceable. [2019 c 340 § 3.]

Construction—Additional remedies—Dog or cat ownership contracts—2019 c 340: See notes following RCW 63.10.070.

REVERSE MORTGAGE LENDING

31.04.500 Short title. RCW *31.04.501 through 31.04.540 may be known and cited as the Washington state reverse mortgage act. [2009 c 149 § 10.]

*Reviser's note: RCW 31.04.501 was repealed by 2017 3rd sp.s. c 25 § 14.

31.04.505 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "FHA-approved reverse mortgage" means a "home equity conversion mortgage" or other reverse mortgage product guaranteed or insured by the federal department of housing and urban development.

(2) "Owner-occupied residence" is the borrower's residence and includes a life estate property the legal title for which is held in the name of the borrower in a reverse mortgage transaction or in the name of a trust, provided the occupant of the property is the beneficiary of that trust.

(3) "Proprietary reverse mortgage loan" is any reverse mortgage loan product that is not a home equity conversion mortgage loan or other federally guaranteed or insured loan.

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(4) "Reverse mortgage broker or lender" means a licensee under the Washington state consumer loan act, chapter 31.04 RCW, or a person exempt from licensing pursuant to federal law.

(5) "Reverse mortgage loan" means a nonrecourse consumer credit obligation in which:

(a) A mortgage, deed of trust, or equivalent consensual security interest securing one or more advances is created in the borrower's dwelling;

(b) Any principal, interest, or shared appreciation or equity is due and payable, other than in the case of default, only after:

(i) The consumer dies;

(ii) The dwelling is transferred; or

(iii) The consumer ceases to occupy the dwelling as a dwelling; and

(c) The broker or lender is licensed under Washington state law or exempt from licensing under federal law. [2009 c 149 § 1.]

31.04.510 Requirements of licensee—Minimum capital—Exceptions. (1) For purposes of RCW *31.04.501 through 31.04.540, in addition to any other requirements, licensees must comply with the following requirements before offering proprietary reverse mortgage loans:

(a) Maintain an irrevocable standby letter of credit approved by the director from a financial institution approved by the director in favor of the licensee in an amount necessary to fund all reverse mortgage loan requirements anticipated over the next twelve months for loans then on the licensee's books and those expected to be made over the next twelve months or three million dollars, whichever is greater. The initial term of the letter of credit must be at least two years.

(b) The financial institution that provides the letter of credit as required in (a) of this subsection may not be affiliated with the licensee.

(c) A licensee with a rating of either 4A1 or 5A1 from Dun & Bradstreet credit services for three consecutive years is exempt from the requirements set forth in (a) of this subsection.

(2) The licensee shall maintain a minimum capital of ten million dollars.

(3) A licensee may rely on the capital of its parent to satisfy the requirement of subsection (2) of this section. However, for any year in which a licensee seeks to so rely, it shall provide to the director a certified financial statement of the parent showing a net worth of at least one hundred million dollars as of the close of its most recent fiscal year and a binding written commitment from the parent to the licensee to make a minimum of ten million dollars available to the licensee as a capital contribution in connection with its reverse mortgage lending program.

(4) Subsections (2) and (3) of this section do not apply to a licensee that:

(a) Only originates proprietary reverse mortgage loans the proceeds of which are fully disbursed at the loan closing; or

(b) Only originates proprietary reverse mortgage loans that are sold into the secondary market to an investor with either a 4A1 or 5A1 rating from Dun & Bradstreet credit services. A licensee that makes such a sale shall obtain a written

commitment to purchase the loans from the investor prior to closing and shall arrange for the delivery of the loans to the investor within ten days of the loan closing. [2009 c 149 § 2.]

*Reviser's note: RCW 31.04.501 was repealed by 2017 3rd sp.s. c 25 § 14.

31.04.515 Loan requirements—Compliance—Rules.

The department of financial institutions has specific authority to develop rules regarding the interpretation and implementation of this section. A proprietary reverse mortgage loan must comply with all of the following requirements:

(1) For the purposes of this section prepayment, in whole or in part, or the refinancing of a reverse mortgage loan, is permitted without penalty at any time during the term of the reverse mortgage loan. For the purposes of this section, penalty does not include any fees, payments, or other charges, not including interest, that would have otherwise been due upon the reverse mortgage being due and payable. However, when a reverse mortgage lender has paid or waived all of the usual fees or costs associated with a reverse mortgage loan, a prepayment penalty may be imposed, provided the penalty does not exceed the total amount of the usual fees or costs that were initially absorbed or waived by the reverse mortgage lender. A mortgagee may not impose a prepayment penalty under this subsection if the prepayment is caused by the occurrence of the death of the borrowers. A borrower must be provided prior written notice of any permissible prepayment penalty under this section;

(2) A reverse mortgage loan may provide for a fixed or adjustable interest rate or combination thereof, including compound interest, and may also provide for interest that is contingent on the value of the property upon execution of the loan or at maturity, or on changes in value between closing and maturity;

(3) The lender shall pay a late charge to the borrower for any late advance. If the lender does not mail or electronically transfer a scheduled monthly advance to the borrower on the first business day of the month, or within five business days of the date the lender receives the request, or such other regularly scheduled contractual date, the late charge is ten percent of the entire amount that should have been paid to the borrower for that month or as a result of that request. For each additional day that the lender fails to make the advance, the lender shall pay interest on the late advance at the interest rate stated in the loan documents. If the loan documents provide for an adjustable interest rate, the rate in effect when the late charge first accrues is used. Any late charge is paid from the lender's funds and may not be added to the unpaid principal balance. Additionally, the lender forfeits the right to interest and a monthly servicing fee for any months in which the advance has not been timely made. This section does not affect the department of financial institution's ability to impose other sanctions to protect consumers of reverse mortgage loans;

(4) The reverse mortgage loan may become due and payable upon the occurrence of any one of the following events:

(a) The home securing the loan is sold or title to the home is otherwise transferred;

(b) All borrowers cease occupying the home as a principal residence, except as provided in subsection (5) of this section; or

(c) A defaulting event occurs which is specified in the loan documents;

(5) Repayment of the reverse mortgage loan is subject to the following additional conditions:

(a) Temporary absences from the home not exceeding one hundred eighty consecutive days do not cause the mortgage to become due and payable;

(b) Extended absences from the home exceeding one hundred eighty consecutive days, but less than one year, do not cause the mortgage to become due and payable if the borrower has taken prior action that secures and protects the home in a manner satisfactory to the lender, as specified in the loan documents;

(c) The lender's right to collect reverse mortgage loan proceeds is subject to the applicable statute of limitations for written loan contracts. Notwithstanding any other provision of law, the statute of limitations shall commence on the date that the reverse mortgage loan becomes due and payable as provided in the loan agreement; and

(d) Using conspicuous, bold sixteen-point or larger type, the lender shall disclose in the loan agreement any interest rate or other fees to be charged during the period that commences on the date that the reverse mortgage loan becomes due and payable, and that ends when repayment in full is made;

(6) The first page of any deed of trust securing a reverse mortgage loan must contain the following statement in sixteen-point boldface type: "This deed of trust secures a reverse mortgage loan;"

(7) A lender or any other party that participates in the origination of a reverse mortgage loan shall not require an applicant for a reverse mortgage to purchase an annuity, insurance, or another product as a condition of obtaining a reverse mortgage loan. A reverse mortgage lender or a broker arranging a reverse mortgage loan shall not:

(a) Offer an annuity to the borrower prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement;

(b) Refer the borrower to anyone for the purchase of an annuity prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement; or

(c) Provide marketing information or annuity sales leads to anyone regarding the prospective borrower or borrower, or receive any compensation for such an annuity sale or referral;

(8)(a) A lender or any other party that participates in the origination of a reverse mortgage loan shall maintain safeguards, acceptable to the department of financial institutions, to ensure that individuals offering reverse mortgage loans do not provide reverse mortgage borrowers with any other financial or insurance products and that individuals participating in the origination of a reverse mortgage loan have no ability or incentive to provide the borrower with any other financial or insurance product;

(b) The borrower shall not be required, directly or indirectly, as a condition of obtaining a reverse mortgage under this section, to purchase any other financial or insurance products;

(9) Prior to accepting a final and complete application for a reverse mortgage loan or assessing any fees, a lender shall refer the prospective borrower to an independent hous-

ing counseling agency approved by the federal department of housing and urban development for counseling. The counseling must meet the standards and requirements established by the federal department of housing and urban development for reverse mortgage counseling. The lender shall provide the borrower with a list of at least five independent housing counseling agencies approved by the federal department of housing and urban development, including at least two agencies that can provide counseling by telephone. Telephone counseling is only available at the borrower's request;

(10) A lender shall not accept a final and complete application for a reverse mortgage loan from a prospective applicant or assess any fees upon a prospective applicant without first receiving a certification from the applicant or the applicant's authorized representative that the applicant has received counseling from an agency as described in subsection (9) of this section. The certification must be signed by the borrower and the agency counselor, and must include the date of the counseling and the names, addresses, and telephone numbers of both the counselor and the borrower. Electronic facsimile copy of the housing counseling certification satisfies the requirements of this subsection. The lender shall maintain the certification in an accurate, reproducible, and accessible format for the term of the reverse mortgage;

(11) A reverse mortgage loan may not be made for a Washington state resident unless that resident is a minimum of sixty years of age as of the date of execution of the loan; and

(12) Except for the initial disbursement of moneys to the closing agent, advances by the lender to the borrower must be issued directly to the borrower, or his or her legal representative, and not to an intermediary or third party. [2009 c 149 § 3.]

31.04.520 Right to rescind transaction. The borrower in a proprietary reverse mortgage transaction has the same right to rescind the transaction as provided in the truth in lending act, Regulation Z, 12 C.F.R. Part 1026. [2015 c 229 § 36; 2009 c 149 § 4.]

31.04.525 Preapproval required from department of financial institutions—Application of section—Rules. (1) This section does not apply to a home equity conversion mortgage or other federally administered reverse mortgage product. A proprietary reverse mortgage loan product may not be offered without preapproval by the department of financial institutions.

(2) The director may make rules regarding the preapproval process, and may require any documentation, information, standards, or data deemed necessary by the director. The director may disapprove any proprietary reverse mortgage loan products that contain or incorporate by reference any inconsistent, ambiguous, or misleading provisions or terms, or exceptions and conditions which unreasonably or deceptively affect the reverse mortgage contract. Additional grounds for disapproval may include, without limitation, the existence in the proprietary product of any benefits provided to the borrower that are contrary to public policy. [2009 c 149 § 5.]

(2021 Ed.)

31.04.530 Required notice to prospective borrower about counseling—Form—Contents—Annual disclosure statements—Property appraisals. (1) A proprietary reverse mortgage loan application may not be taken by a lender unless the loan applicant has received from the lender the following plain language statement in conspicuous bold sixteen-point type or larger, advising the prospective borrower about counseling prior to obtaining the reverse mortgage loan within three business days of receipt of the completed loan application:

"Important notice to reverse mortgage loan applicant

A reverse mortgage is a complex financial transaction that provides a means of using the equity you have built up in your home, or the value of your home, as a way to access home equity.

If you decide to obtain a reverse mortgage loan, you will sign binding legal documents that will have important legal, tax, and financial implications for you and your estate.

It is very important for you to understand the terms of the reverse mortgage and its effect. Before entering into this transaction, you are required by law to consult with an independent loan counselor. A list of approved counselors will be provided to you by the lender or broker. You may also want to discuss your decision with family members or others on whom you rely for financial advice."

(2) As part of the disclosure required under this section, the lender or servicer shall provide an annual, or more frequent, disclosure statement to the borrower, providing details of the loan advances, balance, other terms, and the name and telephone number of the lender's employee or agent who has been specifically designated to respond to inquiries concerning reverse mortgage loans.

(3) In addition to any other loan documentation or disclosure, prior to execution of the loan and at the end of the loan term, the lender may either obtain an independent appraisal of the property value or use the current year's tax assessment valuation of the property. Copies of these appraisals must be timely provided to the borrower within five days of the borrower's written request, provided the borrower has paid for the appraisal. [2009 c 149 § 6.]

31.04.535 Lender default—Treble damages—Civil remedies. (1) In addition to any other remedies, if a lender defaults on any of the reverse mortgage loan terms and fails to cure an actual default after notice as specified in the loan documents, the borrower, or the borrower's estate, is entitled to treble damages.

(2) An arrangement, transfer, or lien subject to this chapter is not invalidated solely because of the failure of a lender to comply with any provision of this chapter. However, this section does not preclude the application of any other existing civil remedies provided by law.

(3) A violation of federal legal requirements for an FHA-approved reverse mortgage as defined in RCW 31.04.505(1) constitutes a violation of this chapter. [2009 c 149 § 7.]

31.04.540 Loan advances—Eligibility and benefits under means-tested programs—Subject to federal law.

(1) To the extent that implementation of this section does not conflict with federal law resulting in the loss of federal funding, proprietary reverse mortgage loan advances made to a borrower must be treated as proceeds from a loan and not as income for the purpose of determining eligibility and benefits under means-tested programs of aid to individuals.

(2) Undisbursed reverse mortgage funds must be treated as equity in the borrower's home and not as proceeds from a loan, resources, or assets for the purpose of determining eligibility and benefits under means-tested programs of aid to individuals.

(3) This section applies to any law or program relating to payments, allowances, benefits, or services provided on a means-tested basis by this state including, but not limited to, optional state supplements to the federal supplemental security income program, low-income energy assistance, property tax relief, aged, blind, or disabled assistance benefits, pregnant women assistance benefits, essential needs and housing support, and medical assistance only to the extent this section does not conflict with Title 19 of the federal social security act. [2011 1st sp.s. c 36 § 15; 2010 1st sp.s. c 8 § 15; 2009 c 149 § 8.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

31.04.901 Short title. This chapter shall be known as the consumer loan act. [1991 c 208 § 21.]

31.04.902 Effective dates, implementation—1991 c 208. (1) Sections 1 through 23 of this act shall take effect January 1, 1992, but the director shall take such steps and adopt such rules as are necessary to implement this act by that date.

(2) Section 24 of this act shall take effect January 1, 1993. [1994 c 92 § 174; 1991 c 208 § 25.]

31.04.903 Effective date—2009 c 120. In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, sections 10 through 14, 16 through 19, 21 through 25, and 27 through 29 of this act take effect July 1, 2010. [2009 c 120 § 31.]

31.04.904 Effective date—2010 c 35. This act takes effect July 1, 2010. [2010 c 35 § 22.]

31.04.905 Application—2018 c 62. The requirements of chapter 62, Laws of 2018 do not apply to any person doing business under, and as permitted by, any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan or building and loan associations, or credit unions. [2018 c 62 § 20.]

31.04.906 Short title—2018 c 62. This act may be known and cited as the Washington student education loan bill of rights. [2018 c 62 § 23.]

Chapter 31.12 RCW

WASHINGTON STATE CREDIT UNION ACT

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31.12.003 Findings—Intent—1997 c 397. The legislature finds that credit unions provide many valuable services to the consumers of this state and will be better prepared to continue providing these services if the Washington state credit union act is modernized, clarified, and reorganized.

Furthermore, the legislature finds that credit unions and credit union members will benefit by enacting provisions clearly specifying the director of financial institutions' authority to enforce statutory provisions.

Revisions to this chapter reflect the legislature's intent to modernize, clarify, and reorganize the existing act, and specify the director's enforcement authority. By enacting the revisions to this chapter, it is not the intent of the legislature to affect the scope of credit unions' field of membership or tax status, or impact federal parity provisions. [1997 c 397 § 1.]

31.12.005 Definitions. Unless the context clearly requires otherwise, as used in this chapter:

(1) "Board" means the board of directors of a credit union.

(2) "Board officer" means an officer of the board elected under RCW 31.12.265(1).

(3) "Branch" of a credit union, out-of-state credit union, or foreign credit union means any facility that meets all of the following criteria:

(a) The facility is a staffed physical facility;

(b) The facility is owned or leased in whole or part by the credit union or its credit union service organization; and

(c) Deposits and withdrawals may be made at the facility.

(4) "Capital" means a credit union's reserves, undivided earnings, and allowance for loan and lease losses, and other items that may be included under RCW 31.12.413 or by rule or order of the director.

(5) "Credit union" means a credit union organized and operating under this chapter.

(6) "Credit union service organization" means an organization that a credit union has invested in pursuant to RCW 31.12.436(1)(h), or a credit union service organization invested in by an out-of-state, federal, or foreign credit union.

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

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

(9) "Federal credit union" means a credit union organized and operating under the laws of the United States.

(10) "Financial institution" means any commercial bank, trust company, savings bank, or savings and loan association, whether state or federally chartered, and any credit union, out-of-state credit union, or federal credit union.

(11) "Foreign credit union" means a credit union organized and operating under the laws of another country or other foreign jurisdiction.

(12) "Insolvency" means:

(a) If, under United States generally accepted accounting principles, the recorded value of the credit union's assets are less than its obligations to its share account holders, depositors, creditors, and others; or

(b) If it is likely that the credit union will be unable to pay its obligations or meet its share account holders' and depositors' demands in the normal course of business.

(13) "Loan" means any loan, overdraft line of credit, extension of credit, or lease, in whole or in part.

(14) "Low-income member" means a member whose family income is not more than eighty percent of the median family income for the metropolitan statistical area where the member lives or for the national metropolitan area where the member lives, whichever is greater, or a member or potential member who earns not more than eighty percent of the total median earnings for individuals for the metropolitan statistical area where the member lives or for the national metropolitan area where the member lives, whichever is greater. For members living outside of a metropolitan statistical area, the department must apply the statewide or national nonmetropolitan area median family income or total median earnings for individuals.

(15) "Material violation of law" means:

(a) If the credit union or person has violated a material provision of:

(i) Law;

(ii) Any cease and desist order issued by the director;

(iii) Any condition imposed in writing by the director in connection with the approval of any application or other request of the credit union; or

(iv) Any supervisory agreement, or any other written agreement entered into with the director;

(b) If the credit union or person has concealed any of the credit union's books, papers, records, or assets, or refused to submit the credit union's books, papers, records, or affairs for inspection to any examiner of the state or, as appropriate, to any examiner of the national credit union administration; or

(c) If a member of a credit union board of directors or supervisory committee, or an officer of a credit union, has breached his or her fiduciary duty to the credit union.

(16) "Net worth" means a credit union's capital, less the allowance for loan and lease losses.

(17) "Operating officer" means an employee of a credit union designated as an officer pursuant to RCW 31.12.265(2).

(18) "Organization" means a corporation, partnership, association, limited liability company, trust, or other organization or entity.

(19) "Out-of-state credit union" means a credit union organized and operating under the laws of another state or United States territory or possession.

(20) "Person" means an organization or a natural person including, but not limited to, a sole proprietorship.

(21) "Principally" or "primarily" means more than one-half.

(22) "Senior operating officer" includes:

(a) An operating officer who is a vice president or above; and

(b) Any employee who has policy-making authority.

(23) "Significantly undercapitalized" means a net worth to total assets ratio of less than four percent.

(24) "Small credit union" means a credit union with up to ten million dollars in total assets.

(25) "Unsafe or unsound condition" means, but is not limited to:

(a) If the credit union is insolvent;

(b) If the credit union has incurred or is likely to incur losses that will deplete all or substantially all of its net worth;

(c) If the credit union is in imminent danger of losing its share and deposit insurance or guarantee; or

(d) If the credit union is significantly undercapitalized.

(26) "Unsafe or unsound practice" means any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the likely consequences of which, if continued, would be abnormal risk of loss or danger to a credit union, its members, or an organization insuring or guaranteeing its shares and deposits. [2017 c 61 § 1. Prior: 2015 c 114 § 1; 2013 c 34 § 1; 2010 c 87 § 1; 2001 c 83 § 1; 1997 c 397 § 2; prior: 1994 c 256 § 68; 1994 c 92 § 175; 1984 c 31 § 2.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

CREDIT UNION ORGANIZATION

31.12.015 Declaration of policy. A credit union is a cooperative society organized under this chapter as a non-profit corporation for the purposes of promoting thrift among its members and creating a source of credit for them at fair and reasonable rates of interest.

The director is the state's credit union regulatory authority whose purpose is to protect members' financial interests, the integrity of credit unions as cooperative institutions, and the interests of the general public, and to ensure that credit unions remain viable and competitive in this state. [1997 c 397 § 3. Prior: 1994 c 256 § 69; 1994 c 92 § 176; 1984 c 31 § 3.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.025 Use of words in name. (1) A credit union shall include the words "credit union" in its name.

(2) No person may conduct business or engage in any other activity under a name or title containing the words "credit union", or represent itself as a credit union, unless it is:

(a) A credit union, out-of-state credit union, or a foreign credit union;

(b) An organization whose membership or ownership is limited to credit unions, out-of-state credit unions, federal credit unions, or their trade organizations;

(c) A person that is primarily in the business of managing one or more credit unions, out-of-state credit unions, or federal credit unions; or

(d) A credit union service organization. [1997 c 397 § 4; 1994 c 256 § 70; 1984 c 31 § 4.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.035 Application for permission to organize—Approval. Seven or more natural persons who reside in this state may apply to the director for permission to organize a credit union. The application must include copies of the proposed articles of incorporation and bylaws, and such other information as may be required by the director. The director

shall approve or deny a complete application within sixty days of receipt. [1997 c 397 § 5; 1994 c 92 § 177; 1984 c 31 § 5.]

31.12.055 Manner of organizing—Articles of incorporation—Submission to director. (1) Persons applying for the organization of a credit union shall execute articles of incorporation stating:

- (a) The initial name and location of the credit union;
- (b) That the duration of the credit union is perpetual;
- (c) That the purpose of the credit union is to engage in the business of a credit union and any other lawful activities permitted to a credit union by applicable law;
- (d) The number of its directors, which must not be less than five or greater than fifteen, and the names of the persons who are to serve as the initial directors;
- (e) The names of the incorporators;
- (f) The extent, if any, to which personal liability of directors is limited;
- (g) The extent, if any, to which directors, supervisory committee members, officers, employees, and others will be indemnified by the credit union; and
- (h) Any other provision which is not inconsistent with this chapter.

(2) Applicants shall submit the articles of incorporation in triplicate to the director. [2017 c 61 § 2; 1997 c 397 § 6. Prior: 1994 c 256 § 71; 1994 c 92 § 179; 1984 c 31 § 7.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.065 Bylaws—Submission to director. (1) Persons applying for the organization of a credit union shall adopt bylaws that prescribe the manner in which the business of the credit union shall be conducted. The bylaws shall include:

- (a) The name of the credit union;
- (b) The field of membership of the credit union;
- (c) Reasonable qualifications for admission as a member of the credit union, and the procedures for expelling a member;
- (d) The number of directors and supervisory committee members, and the length of terms they serve and the permissible term length of any interim director or supervisory committee member;
- (e) Any qualification for eligibility to serve on the credit union's board or supervisory committee;
- (f) The number of credit union employees that may serve on the board, if any;
- (g) The frequency of regular meetings of the board and the supervisory committee, and the manner in which members of the board or supervisory committee will be notified of meetings;
- (h) The timing of the annual membership meeting;
- (i) The manner in which members may call a special membership meeting;
- (j) The manner in which members will be notified of membership meetings;
- (k) The number of members constituting a quorum at a membership meeting;
- (l) Provisions, if any, for the indemnification of directors, supervisory committee members, officers, employees,

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and others by the credit union, if not included in the articles of incorporation; and

(m) Any other provision which is not inconsistent with this chapter.

(2) Applicants shall submit the bylaws in duplicate to the director. [2017 c 61 § 3; 2001 c 83 § 2; 1997 c 397 § 7. Prior: 1994 c 256 § 72; 1994 c 92 § 180; 1984 c 31 § 8.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.075 Approval, denial of proposed credit union—Appeal. (1) When the proposed articles of incorporation and bylaws complying with the requirements of RCW 31.12.055 and 31.12.065 have been filed with the director, the director shall:

- (a) Determine whether the articles of incorporation and bylaws are consistent with this chapter; and
- (b) Determine the feasibility of the credit union, taking into account surrounding facts and circumstances influencing the successful operation of the credit union.

(2) If the director is satisfied with the determinations made under subsection (1)(a) and (b) of this section, the director shall endorse each of the articles of incorporation "approved", indicate the date the approval was granted, and return two sets of articles and one set of bylaws to the applicants.

(3) If the director is not satisfied with the determinations made under subsection (1)(a) and (b) of this section, the director shall endorse each of the articles of incorporation "denied," indicate the date of, and reasons for, the denial, and return two copies of the articles of incorporation with one copy of the bylaws to the person from whom they were received. The director shall at the time of returning the copies of the articles of incorporation and bylaws, also provide notice to the applicant of the applicant's right to appeal the denial under chapter 34.05 RCW. The denial is conclusive unless the applicant requests a hearing under chapter 34.05 RCW. [1997 c 397 § 8; 1994 c 92 § 181; 1984 c 31 § 9.]

31.12.085 Filing upon approval—Fee—Notice to director—Authority to commence business. (1) Upon approval under RCW 31.12.075(2), the director shall deliver a copy of the articles of incorporation to the secretary of state for filing. Upon receipt of the approved articles of incorporation provided by the applicants, and the secretary of state filing fee paid by the department, the secretary of state shall file the articles of incorporation.

(2) Upon filing of the approved articles of incorporation by the secretary of state, the persons named in the articles of incorporation and their successors may conduct business as a credit union, having the powers, duties, and obligations set forth in this chapter. A credit union may not conduct business until the articles have been filed by the secretary of state.

(3) A credit union shall organize and begin conducting business within six months of the date that its articles of incorporation are filed by the secretary of state or its charter is void. However, the director may grant extensions of the six-month period. [2010 c 87 § 2; 2001 c 83 § 3; 1997 c 397 § 9; 1994 c 92 § 182; 1993 c 269 § 12; 1984 c 31 § 10.]

Additional notes found at www.leg.wa.gov

CORPORATE GOVERNANCE

31.12.105 Amendment to articles of incorporation—Approval of director—Procedure. A credit union's articles of incorporation may be amended by the board with the approval of the director. Complete applications for amendments to the articles must be approved or denied by the director within sixty days of receipt. Amendments to a credit union's articles of incorporation must conform with RCW 31.12.055.

Upon approval, the director shall promptly deliver the articles' amendments, including any necessary filing fees paid by the applicant, to the secretary of state for filing. The articles' amendments are effective upon filing of the amendments by the secretary of state. [2001 c 83 § 4; 1997 c 397 § 10; 1994 c 92 § 184; 1984 c 31 § 12.]

31.12.115 Amendment to bylaws—Approval of director required—Procedure. (1) A credit union's field of membership bylaws may be amended by the board with approval of the director. Complete applications to amend a credit union's field of membership bylaws must be approved or denied by the director within sixty days of receipt.

(2) A credit union's other bylaws may be amended by the board.

(3) Any amendments to a credit union's bylaws must conform with RCW 31.12.065. [2001 c 83 § 5; 1997 c 397 § 11. Prior: 1994 c 256 § 73; 1994 c 92 § 185; 1984 c 31 § 13.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.185 Annual membership meetings. (1) A credit union's annual membership meeting shall be held at such time and in such manner as the bylaws prescribe, and shall be conducted according to the rules of procedure approved by the board.

(2) Notice of the annual membership meetings of a credit union shall be given as provided in the bylaws of the credit union. [2019 c 19 § 1; 1997 c 397 § 12; 1987 c 338 § 2; 1984 c 31 § 20.]

31.12.195 Special membership meetings. (1) A special membership meeting of a credit union may be called by:

(a) A majority vote of the board;

(b) Written petition signed or similarly authenticated by at least ten percent or two thousand of the members of a credit union, whichever is less;

(c) A unanimous vote of the supervisory committee for the purpose of presenting and discussing a special report by the supervisory committee regarding the failure of the board to adequately respond within a reasonable time frame to findings or recommendations previously provided to the board by the supervisory committee pursuant to RCW 31.12.335; or

(d) Unanimous vote of the supervisory committee to suspend a director for cause pursuant to RCW 31.12.345 if the supervisory committee has provided the director and the board with written notice of such cause and a statement of reasons why cause was found, and the board and the director have failed to act within a reasonable period to rectify the activity that constitutes cause.

(2) A call of a special membership meeting of a credit union shall be in writing submitted to the secretary of the

credit union by the board, the petitioners, or the supervisory committee as applicable, and shall state specifically the purpose or purposes for which the meeting is called and the agenda item or items for consideration by the members at the meeting. If the special membership meeting is called for the removal of one or more directors or supervisory committee members, the call shall state the name of each individual whose removal is sought.

(3)(a) Upon receipt of a call for a special membership meeting, the secretary of the credit union shall determine whether the call satisfies the requirements of this section. If so, the secretary shall determine the date and time on which the special membership meeting will be held, and provide notice of the special membership meeting in accordance with the requirements of this subsection and the credit union's bylaws. The special membership meeting must be held no later than ninety days after the date on which the call is received by the secretary.

(b) The secretary shall give notice of the special membership meeting at least thirty days before the date of the meeting, or within such other reasonable time period as may be provided by the bylaws. The notice must state the purpose or purposes for which the special membership meeting is called, and the agenda items for the meeting. If the special membership meeting is called for the removal of one or more directors or supervisory committee members, the notice must state the name of each individual whose removal is sought.

(4) Except as provided in this subsection, the chairperson of the board shall preside over special membership meetings. If the purpose of the special membership meeting includes the removal of the chairperson, the next highest ranking board officer whose removal is not sought shall preside over the meeting. If the removal of all board officers is sought, the chairperson of the supervisory committee shall preside over the special membership meeting.

(5) At the special membership meeting, only those agenda items that are stated in the notice for the meeting may be considered.

(6) Special membership meetings shall be conducted according to the rules of procedure approved by the board. [2019 c 19 § 2; 2017 c 61 § 4; 2015 c 114 § 2; 2013 c 34 § 2; 1997 c 397 § 13. Prior: 1994 c 256 § 77; 1994 c 92 § 188; 1987 c 338 § 3; 1984 c 31 § 21.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.225 Board of directors—Election of directors—Terms—Vacancies—Meetings—Rules. (1) The business and affairs of a credit union shall be managed by a board of not less than five and not greater than fifteen directors.

(2) The directors must be elected at the credit union's annual membership meeting. They shall hold their offices until their successors are qualified and elected or appointed.

(3) Directors shall be elected to terms of between one and three years, as provided in the bylaws. If the terms are longer than one year, the directors must be divided into classes, and an equal number of directors, as nearly as possible, must be elected each year.

(4) Except as provided in subsection (5) of this section, any vacancy on the board must be filled by an interim director appointed by the board, unless the interim director would

serve a term of fewer than ninety days. Interim directors appointed to fill vacancies created by expansion of the board will serve until the next annual meeting of members. Other interim directors will serve out the unexpired term of the former director, unless provided otherwise in the credit union's bylaws.

(5) In the case of a merger between two credit unions pursuant to RCW 31.12.461, a board member of the merging credit union may continue to serve as a board member of the continuing credit union for a period not to exceed the equivalent of the duration of his or her unexpired term on the board of the merging credit union, provided that the approved plan of merger or other agreement approved by the director provides for such service on the continuing credit union's board with a corresponding expansion in the size of the continuing credit union's board not to exceed the limits under subsection (1) of this section.

(6) The board will have at least six regular meetings each year, with at least one of these meetings held in each calendar quarter. The director may require the board to meet more frequently than six times per year if the director finds it necessary in order to address matters noted in any examination.

(7) The director may adopt rules to interpret this section. [2015 c 114 § 3; 2013 c 34 § 3; 2001 c 83 § 6; 1997 c 397 § 14; 1984 c 31 § 24.]

31.12.235 Directors—Qualifications—Operating officers and employees may serve. (1) A director must be a natural person and a member of the credit union. If a director ceases to be a member of the credit union, the director shall no longer serve as a director.

(2)(a) If a director is absent from more than one-fourth of the regular board meetings in any twelve-month period in a term without being reasonably excused by the board, the director shall no longer serve as a director for the period remaining in the term.

(b) The board secretary shall promptly notify the director that he or she shall no longer serve as a director. Failure to provide notice does not affect the termination of the director's service under (a) of this subsection.

(3) A director must meet any qualification requirements set forth in the credit union's bylaws. If a director fails to meet these requirements, the director shall no longer serve as a director.

(4) The operating officers and employees of the credit union may serve as directors of the credit union, but only as permitted by the credit union's bylaws. In no event may the operating officers and employees of the credit union constitute a majority of the board. [2013 c 34 § 4; 2001 c 83 § 7; 1997 c 397 § 15; 1994 c 256 § 78; 1984 c 31 § 25.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.246 Removal of directors and supervisory committee members—Interim directors and supervisory committee members. (1) The members of a credit union may remove a director of the credit union at a special membership meeting held in accordance with RCW 31.12.195 and called for that purpose. If the members remove a director, the members may at the same special membership meeting elect an interim director to complete the remainder of the former

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director's term of office or authorize the board to appoint an interim director as provided in RCW 31.12.225.

(2) The members of a credit union may remove a supervisory committee member at a special membership meeting held in accordance with RCW 31.12.195 and called for that purpose. If the members remove a supervisory committee member, the members may at the same special membership meeting elect an interim supervisory committee member to complete the remainder of the former supervisory committee member's term of office or authorize the supervisory committee to appoint an interim supervisory committee member as provided in RCW 31.12.326. [2017 c 61 § 5; 1997 c 397 § 16; 1984 c 31 § 26.]

31.12.251 Removal of directors—No quorum. If at any time because of the removal of one or more credit union directors under this chapter, the board of directors of a credit union has less than a quorum of directors, all powers and functions vested in or exercisable by the board vest in and are exercisable by the director or directors remaining until such a time as there is a quorum on the board of directors. If all of the directors of a credit union are removed under this chapter, the director of the department of financial institutions shall appoint persons to serve temporarily as directors of the credit union until such a time as their respective successors take office. [2010 c 87 § 19.]

31.12.255 Board of directors—Powers and duties. The business and affairs of a credit union shall be managed by the board of the credit union. The duties of the board include, but are not limited to, the duties enumerated in this section. The duties listed in subsection (1) of this section may not be delegated by the credit union's board of directors. The duties listed in subsection (2) of this section may be delegated to a committee, officer, or employee, with appropriate reporting to the board.

(1) The board shall:

(a) Set the par value of shares, if any, of the credit union;

(b) Set the minimum number of shares, if any, required for membership;

(c) Establish policies governing the operation of the credit union;

(d) Establish the conditions under which a member may be expelled for cause;

(e) Fill vacancies on all committees except the supervisory committee;

(f) Approve an annual operating budget for the credit union;

(g) Designate those persons or positions authorized to execute or certify documents or records on behalf of the credit union; and

(h) Review the supervisory committee's annual report.

(2) In addition, unless delegated, the board shall:

(a) Determine the maximum amount of shares and deposits that a member may hold in the credit union;

(b) Set the rate of interest on deposits and the rate of dividends on shares and authorize the payment of dividends on shares; and

(c) Approve the charge-off of credit union losses. [2015 c 123 § 1; 2001 c 83 § 8; 1997 c 397 § 17; 1994 c 256 § 79; 1984 c 31 § 27.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.265 Officers. (1) The board at its first meeting after the annual membership meeting shall elect board officers from among its members, as provided in the credit union's bylaws. The board will elect as many board officers as it deems necessary for transacting the business of the board of the credit union. The board officers shall hold office until their successors are qualified and elected, unless sooner removed as provided in this chapter. All board officers must be elected members of the board. However, the office of board treasurer and board secretary may be held by the same person and need not be elected members of the board.

(2) The board may designate as many operating officers as it deems necessary for conducting the business of the credit union, including, but not limited to, a principal operating officer. Individuals serving as operating officers may also serve as board officers in accordance with subsection (1) of this section and subject to RCW 31.12.235(4). [1997 c 397 § 18; 1994 c 256 § 80; 1987 c 338 § 4; 1984 c 31 § 28.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.267 Officials—Fiduciary duty—Information relied on—Definition. (1) Officials owe a fiduciary duty to the credit union, and must discharge the duties of their positions:

- (a) In good faith;
- (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (c) In a manner the official reasonably believes to be in the best interests of the credit union.

(2) In discharging the duties of an official, the official is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the credit union whom the official reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the official reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board of directors or supervisory committee of which the official is not a member if the official reasonably believes the committee merits confidence.

(3) An official is not acting in good faith if the official has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) An official is not liable for any action taken as a director, or any failure to take any action, if the director performed the duties of the director's office in compliance with this section.

(5) As used in this section, "official" means a director, board officer, supervisory committee member, or senior operating officer of the credit union. [2017 c 61 § 6; 2010 c 87 § 3; 2001 c 83 § 9; 1997 c 397 § 19.]

31.12.269 Directors and committee members—Limitations on personal liability—Exceptions. (1) Directors and committee members at a credit union or federal credit union have no personal liability for harm caused by acts or

omissions performed on behalf of the credit union if: The director or committee member was acting within the scope of his or her duties at the time of the act or omission; the harm was not caused by an act in violation of RCW 31.12.267; the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed; and the harm was not caused by the director or committee member's operation of a motor vehicle, vessel, aircraft, or other vehicle for which the state requires the operator or the owner of the vehicle, craft, or vessel to either possess an operator's license or maintain insurance.

(2) This section does not affect a director's or committee member's liability to the credit union or to a governmental entity for harm to the credit union or governmental entity caused by the director or committee member.

(3) This section does not affect the vicarious liability of the credit union with respect to harm caused to any person, including harm caused by the negligence of a director or committee member.

(4) This section does not affect the liability of employees of the credit union for acts or omissions done within the scope of their employment. [2001 c 120 § 1.]

31.12.285 Suspension of members of board or supervisory committee by board—For cause. The board may, for cause, suspend a member of the board or a member of the supervisory committee until a special membership meeting, called for that purpose, is held under RCW 31.12.195. The membership meeting must be held within ninety days after the suspension. The members attending the meeting shall vote whether to remove a suspended party. For purposes of this section, "cause" includes demonstrated financial irresponsibility, a breach of fiduciary duty to the credit union, or activities which, in the judgment of the board, threaten the safety and soundness of the credit union. [2015 c 114 § 4; 2013 c 34 § 5; 1997 c 397 § 21; 1984 c 31 § 30.]

31.12.326 Supervisory committee—Membership—Terms—Vacancies—Operating officers and employees may not serve—Audit committee alternative. (1) A supervisory committee of at least three members must be elected at the annual membership meeting of the credit union. Members of the supervisory committee shall serve a term of three years, unless sooner removed under this chapter or until their successors are qualified and elected or appointed. The members of the supervisory committee shall be divided into classes so that as equal a number as is possible is elected each year.

(2) At least one supervisory committee member may attend each regular meeting of the board. However, supervisory committee members may be excluded from executive sessions of board meetings.

(3)(a) If a supervisory committee member is absent from more than one-third of the committee meetings in any twelve-month period in a term without being reasonably excused by the committee, the member shall no longer serve as a member of the committee for the period remaining in the term.

(b) The supervisory committee shall promptly notify the member that he or she shall no longer serve as a committee

member. Failure to provide notice does not affect the termination of the member's service under (a) of this subsection.

(4) A supervisory committee member must be a natural person and a member of the credit union. If a member of the supervisory committee ceases to be a member of the credit union, the member shall no longer serve as a committee member. The chairperson of the supervisory committee may not serve as a board officer.

(5) Except as provided in subsection (6) of this section, any vacancy on the committee must be filled by an interim member appointed by the committee, unless the interim member would serve a term of fewer than ninety days. Interim members appointed to fill vacancies created by expansion of the committee will serve until the next annual meeting of members. Other interim members may serve out the unexpired term of the former member, unless provided otherwise by the credit union's bylaws. However, if all positions on the committee are vacant at the same time, the board may appoint interim members to serve until the next annual membership meeting.

(6) In the case of a merger between two credit unions pursuant to RCW 31.12.461, a supervisory committee member of the merging credit union may continue to serve as a supervisory committee member of the continuing credit union for a period not to exceed the equivalent of the duration of his or her unexpired term on the supervisory committee of the merging credit union, provided that the approved plan of merger or other agreement approved by the director provides for such service on the continuing credit union's supervisory committee with a corresponding expansion in the size of the continuing credit union's supervisory committee.

(7) No operating officer or employee of a credit union may serve on the credit union's supervisory committee. No more than one director may be a member of the supervisory committee at the same time, unless provided otherwise by the credit union's bylaws. No member of the supervisory committee may serve on the credit committee or investment committee of the credit union while serving on the supervisory committee.

(8) A credit union may establish an audit committee in lieu of a supervisory committee. An audit committee and its members possess the same duties and powers, and are subject to the same limitations as a supervisory committee and its members pursuant to this chapter. [2017 c 61 § 7; 2015 c 114 § 5; 2001 c 83 § 10; 1997 c 397 § 22; 1984 c 31 § 34.]

31.12.335 Supervisory committee—Duties. (1) The supervisory committee of a credit union shall:

- (a) Keep informed as to the financial condition of the credit union and the decisions of the credit union's board;
- (b) Perform or arrange for:
 - (i) A complete annual audit of the credit union; and
 - (ii) A verification of its members' accounts at least once every two years, and shall provide any related findings and recommendations from such audits and verifications to the board;
- (c) Provide an annual report to members at each annual membership meeting;
- (d) Perform or arrange for additional audits as requested by the board or management or as deemed necessary by the supervisory committee and provide any related findings and

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recommendations to management or the board as deemed appropriate by the supervisory committee;

(e) Monitor the implementation of management responses to material adverse findings in audits and regulatory examinations;

(f) Implement a process for the supervisory committee to receive and respond to whistleblower complaints; and

(g) Perform any additional duties as specified by the board or in the credit union's bylaws.

(2) The supervisory committee may in its sole discretion retain, at the credit union's expense, independent counsel or other professional advisors or consultants as necessary to perform the duties under this section. [2019 c 19 § 3; 2017 c 61 § 8; 2001 c 83 § 11; 1997 c 397 § 23. Prior: 1994 c 256 § 82; 1994 c 92 § 192; 1984 c 31 § 35.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.345 Suspension of members of a committee or members of the board by supervisory committee—For cause. (1) The supervisory committee may, by unanimous vote, for cause, suspend a member of the board, until a special membership meeting called for that purpose is held in accordance with the requirements of RCW 31.12.195. The membership meeting must be held within ninety days after the suspension. The members participating in that meeting shall vote whether to remove the suspended person or persons.

(2) For purposes of this section, "cause" includes demonstrated financial irresponsibility, a breach of fiduciary duty to the credit union, or activities which, in the judgment of the supervisory committee, threaten the safety and soundness of the credit union. [2015 c 114 § 6; 1997 c 397 § 24; 1984 c 31 § 36.]

(2) For purposes of this section, "cause" includes demonstrated financial irresponsibility, a breach of fiduciary duty to the credit union, or activities which, in the judgment of the supervisory committee, threaten the safety and soundness of the credit union. [2015 c 114 § 6; 1997 c 397 § 24; 1984 c 31 § 36.]

31.12.365 Directors and supervisory committee members—Compensation—Reimbursement—Rules. (1)

A credit union may pay to its directors and supervisory committee members reasonable compensation for their service as directors and supervisory committee members. Irrespective of whether it pays compensation to its directors or supervisory committee members, a credit union may provide to its directors and supervisory committee members:

- (a) Gifts of minimal value;
- (b) Insurance coverage or incidental services, available to employees generally; and
- (c) Reimbursement for reasonable expenses incurred on behalf of themselves and their spouses in the performance of the directors' and supervisory committee members' duties.

(2) The director may adopt rules to interpret this section. [2015 c 123 § 2; 2013 c 34 § 6; 2001 c 83 § 12; 1997 c 397 § 25; 1984 c 31 § 38.]

31.12.367 Risk—Bond coverage—Notice to director—Timing. (1) Each credit union must be adequately insured against risk. In addition, each director, officer, committee member, and employee of a credit union must be adequately bonded.

(2) When a credit union receives notice that its fidelity bond coverage will be suspended or terminated, the credit union shall notify the director in writing not less than thirty-five days prior to the effective date of the suspension or ter-

mination. [2015 c 114 § 7; 2001 c 83 § 13; 1997 c 397 § 26; 1994 c 92 § 191; 1984 c 31 § 32. Formerly RCW 31.12.306.]

31.12.372 Director may suspend any person, reason—Notice—Injunctions. (1) The director may issue and serve written notice of charges under RCW 31.12.575 to suspend a person from further participation in any manner in the conduct of the affairs of a credit union if the director determines that such an action is necessary for the protection of the credit union or the interests of the credit union's members.

(2) Any suspension notice issued by the director is effective upon service and, unless the superior court of the county in which the primary place of business of the credit union is located issues a stay of the notice, remains in effect and enforceable until:

(a) The director dismisses the charges contained in the notice served on the person; or

(b) The effective date of a final order for removal of the person pursuant to administrative proceedings under RCW 31.12.625.

(3) With the suspension notice, the director shall serve a notice of intent to remove or prohibit under RCW 31.12.575.

(4) Within ten days after the person has been served with the suspension notice, the person may apply to the superior court of the county in which the primary place of business of the credit union is located for an injunction setting aside, limiting, or holding in abeyance the suspension notice pending the completion of the administrative proceedings under the notice issued under subsection (3) of this section.

(5) In the case of a violation or threatened violation of a suspension notice, the director may apply to the superior court of the county in which the primary place of business of the credit union is located for an injunction to enforce the notice, and the court shall issue an injunction if it determines that there has been a violation or threatened violation.

(6) For the purposes of this section, the principal place of business of a foreign or out-of-state credit union is Thurston county. [2015 c 114 § 8; 2010 c 87 § 17.]

MEMBERSHIP

31.12.382 Limitation on membership. (1) Membership in a credit union shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district. The director may adopt rules: (a) Reasonably defining "common bond"; and (b) setting forth standards for the approval of charters.

(2) The director may approve the inclusion within the field of membership of a credit union a group having a separate common bond if the director determines that the group is not of sufficient size or resources to support a viable credit union of its own.

(3) The director may approve, in accordance with the provisions of this chapter, the inclusion within a credit union's field of membership of groups having a common bond of occupation or association, or groups within a well-defined neighborhood, community, or rural district, notwithstanding the fact that such groups are situated partially or wholly outside this state. [2019 c 19 § 4; 1994 c 92 § 178; 1984 c 31 § 6. Formerly RCW 31.12.045.]

31.12.384 Membership. (1) A credit union may admit to membership those persons qualified for membership as set forth in its bylaws.

(2) An organization whose membership, ownership, or employees are comprised principally of persons who are eligible for membership in the credit union may become a member of the credit union. [1997 c 397 § 27; 1984 c 31 § 16. Formerly RCW 31.12.145.]

31.12.386 Voting rights—Methods—Proxy—Under eighteen years of age. (1) No member may have more than one vote. A natural person may not hold more than one membership in a credit union on behalf of himself or herself. An organization having membership in a credit union may cast one vote through a natural person agent duly authorized in writing.

(2) Members may vote, as prescribed in the credit union's bylaws, by mail ballot, absentee ballot, or other method. However, no member may vote by proxy.

(3) A member who is not at least eighteen years of age is not eligible to vote as a member unless otherwise provided in the credit union's bylaws. [2017 c 61 § 9; 1997 c 397 § 28; 1994 c 256 § 76; 1984 c 31 § 17. Formerly RCW 31.12.155.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.388 Expulsion of member—Challenge—Share and deposit accounts. (1) Members expelled from the credit union will be notified of the expulsion and the reasons upon which it is based. The credit union will, upon request of the expelled member, allow the member to challenge the expulsion and seek reinstatement as a member.

(2) The amounts in an expelled member's share and deposit accounts must be promptly paid to the person following expulsion, and after deducting amounts due from the member(s) to the credit union, including, but not limited to, any applicable penalties for early withdrawal. Expulsion will not operate to relieve the person from outstanding liabilities owed to the credit union. [1997 c 397 § 29; 1984 c 31 § 31. Formerly RCW 31.12.295.]

POWERS OF CREDIT UNIONS

31.12.402 Powers. A credit union may:

(1) Issue shares to and receive deposits from its members in accordance with RCW 31.12.416;

(2) Make loans to its members in accordance with RCW 31.12.426 and 31.12.428;

(3) Pay dividends and interest to its members in accordance with RCW 31.12.418;

(4) Impose reasonable charges for the services it provides to its members;

(5) Impose financing charges and reasonable late charges in the event of default on loans, subject to applicable law, and recover reasonable costs and expenses, including, but not limited to, collection costs, and reasonable attorneys' fees incurred both before and after judgment, incurred in the collection of sums due, if provided for in the note or agreement signed by the borrower;

(6) Acquire, lease, hold, assign, pledge, sell, or otherwise dispose of interests in personal property and in real property in accordance with RCW 31.12.438;

(7) Deposit and invest funds in accordance with RCW 31.12.436;

(8) Borrow money, up to a maximum of fifty percent of its total shares, deposits, and net worth;

(9) Discount or sell any of its assets, or purchase any or all of the assets of another credit union, out-of-state credit union, or federal credit union. However, a credit union may not discount or sell all, or substantially all, of its assets without the approval of the director;

(10) Accept deposits of deferred compensation of its members;

(11) Act as fiscal agent for and receive payments on shares and deposits from the federal government or this state, and any agency or political subdivision thereof;

(12) Engage in activities and programs as requested by the federal government, this state, and any agency or political subdivision thereof, when the activities or programs are not inconsistent with this chapter;

(13) Hold membership in credit unions, out-of-state credit unions, or federal credit unions and in organizations controlled by or fostering the interests of credit unions, including, but not limited to, a central liquidity facility organized under state or federal law;

(14) Pay additional dividends and interest to members, or an interest rate refund to borrowers;

(15) Enter into lease agreements, lease contracts, and lease-purchase agreements with members;

(16) Act as insurance agent or broker for the sale to members of:

(a) Group life, accident, health, and credit life and disability insurance; and

(b) Other insurance that other types of Washington state-chartered financial institutions are permitted to sell, on the same terms and conditions that these institutions are permitted to sell such insurance;

(17) Impose a reasonable service charge for the administration and processing of accounts that remain dormant for a period of time specified by the credit union;

(18) Establish and operate on-premises or off-premises electronic facilities;

(19) Enter into formal or informal agreements with another credit union for the purpose of fostering the development of the other credit union;

(20) Work with community leaders to develop and prioritize efforts to improve the areas where their members reside by making investments in the community through contributions to organizations that primarily serve either a charitable, social, welfare, or educational purpose, or are exempt from taxation pursuant to section 501(c)(3) of the internal revenue code;

(21) Limit the personal liability of its directors in accordance with provisions of its articles of incorporation that conform with RCW 23B.08.320;

(22) Indemnify its directors, supervisory committee members, officers, employees, and others in accordance with provisions of its articles of incorporation or bylaws that conform with RCW 23B.08.500 through 23B.08.600;

(23) Conduct a promotional contest of chance as authorized in RCW 9.46.0356(1)(b), as long as the conditions of RCW 9.46.0356(5) and *30.22.260 are complied with to the satisfaction of the director; and

(24) Exercise such incidental powers as are necessary or convenient to enable it to conduct the business of a credit union. [2011 c 303 § 6; 2001 c 83 § 14; 1997 c 397 § 30. Prior: 1994 c 256 § 74; 1994 c 92 § 186; 1990 c 33 § 564; 1984 c 31 § 14. Formerly RCW 31.12.125.]

*Reviser's note: RCW 30.22.260 was recodified as RCW 30A.22.260 pursuant to 2014 c 37 § 4, effective January 5, 2015.

Findings—Intent—2011 c 303: See note following RCW 9.46.0356.

Findings—Construction—1994 c 256: See RCW 43.320.007.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

31.12.404 Additional powers—Authority of director.

(1) Notwithstanding any other provision of law, and in addition to all powers and authorities, express or implied, that a credit union has under the laws of this state, a credit union has the powers and authorities that a federal credit union had on December 31, 1993, or a subsequent date not later than July 28, 2019.

(2) Notwithstanding any other provision of law, and in addition to the powers and authorities, express or implied, that a credit union has under subsection (1) of this section, a credit union has the powers and authorities that a federal credit union has subsequent to July 28, 2019, if the director finds that the exercise of the power and authority serves the convenience and advantage of members of credit unions, and maintains the fairness of competition and parity between credit unions and federal credit unions. However, a credit union must comply with RCW 31.12.408.

(3) Notwithstanding any other provision of law, and in addition to the powers and authorities, express or implied, that a credit union has under subsections (1) and (2) of this section, a credit union may exercise the powers and authorities that it would have if it were an out-of-state credit union. Any such power or authority is subject to regulation by the director. In exercising such power or authority, a credit union:

(a) Must comply with RCW 31.12.408;

(b) Is not granted the field of membership powers or authorities of any out-of-state credit union; and

(c) Must be able to exercise such power or authority consistent with the purposes of this chapter.

(4) Before exercising any power or authority afforded under subsection (3) of this section, a credit union must first notify the director of its intent to do so. This notice must be sent to the director by United States mail or by electronic means if the director accepts electronic delivery. If the director takes no action on the request within thirty days of delivery of the notice, the right to exercise the power or authority is deemed granted, subject to the restrictions in subsection (3)(a) and (b) of this section. In order to grant the request, the director must find that:

(a) The request complies with subsection (3)(a), (b), and (c) of this section; and

(b) The exercise of such power or authority serves the convenience and advantage of members of credit unions and maintains the fairness of competition and parity between credit unions and out-of-state credit unions.

(5) The restrictions, limitations, and requirements applicable to specific powers or authorities of federal or out-of-state credit unions apply to credit unions exercising those

powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to the specific exercise of the powers or authorities granted credit unions solely under this section.

(6) As used in this section, "powers and authorities" include, but are not limited to, powers and authorities in corporate governance matters. [2019 c 19 § 5; 2017 c 61 § 10; 2015 c 114 § 9; 2001 c 83 § 15; 1997 c 397 § 31. Prior: 1994 c 256 § 75; 1994 c 92 § 187; 1987 c 338 § 1; 1984 c 31 § 15. Formerly RCW 31.12.136.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.408 Insurance required after December 31, 1998—Federal share insurance program or an equivalent share insurance program—Director's findings. (1) After December 31, 1998, credit unions must be insured under the federal share insurance program or an equivalent share insurance program as defined in this section. For the purposes of this section an equivalent share insurance program is a program that: (a) Holds reserves proportionately equal to the federal share insurance program; (b) maintains adequate reserves and access to additional sources of funds through replenishment features, reinsurance, or other sources of funds; and (c) has share insurance contracts that reflect a national geographic diversity.

(2) Before any credit union may insure its share deposits with a share insurance program other than the federal share insurance program, the director must make a finding that the alternative share insurance program meets the standards set forth in this section, following a public hearing and a report on the basis for such finding to the appropriate standing committees of the legislature. All such findings shall be made before December 1st of any year and shall not take effect until the end of the regular legislative session of the following year.

(3) Any alternative share insurance program approved under this section shall be reviewed annually by the director to determine whether the program currently meets the standards in this section. The director shall prepare a written report of his or her findings including supporting analysis and forward the report to the appropriate standing committees of the legislature. If the director finds that the alternative share insurance program does not currently meet the standards of this section the director shall notify all credit unions that insure their shares under the alternative share insurance program, and shall include notice of a public hearing for the purpose of receiving comment on the director's finding. Following the hearing the director may either rescind his or her finding or reaffirm the finding that the alternative share insurance program does not meet the standards in this section. If the finding is reaffirmed, the director shall order all credit unions whose shares are insured with the alternative share insurance program to file, immediately, an application with the national credit union administration to convert to the federal share insurance program. [1996 c 5 § 6; (1998 c 122 § 6 expired July 1, 2001). Formerly RCW 31.12.039.]

Findings—Intent—1996 c 5: "The legislature finds that since its creation in 1975 the Washington credit union share guaranty association has provided security to member share accounts and other valuable services to members.

The legislature further finds that although during that period thirty member credit unions have been required to liquidate or merge with other mem-

bers with the assistance of the association, no depositor has experienced any loss.

The legislature further finds that the changing financial services environment, and ever-increasing competitive pressures have caused the association to review its operation and capacity with the result that the membership has recommended an orderly dissolution, and now seeks the adoption of standards and procedures by the legislature that will direct and ensure an orderly transition to federal share insurance.

Therefore, it is the intent of the legislature to effectuate a fair and orderly transition of association members to federal share insurance, and provide the highest available level of safety for share accounts in keeping with depositors' expectations." [1996 c 5 § 1.]

Additional notes found at www.leg.wa.gov

31.12.413 Low-income credit unions—Director's approval required—Powers—Rules. (1) A credit union may apply in writing to the director for designation as a low-income credit union. To qualify for approval of this designation, the credit union must provide evidence satisfactory to the director that at least fifty percent of a substantial and well-defined segment of the credit union's members or potential primary members are low-income members.

(2) Among other powers and authorities, a low-income credit union may:

(a) Issue secondary capital accounts approved in advance by the director upon application of the credit union; and

(b) Accept and maintain shares and deposits from non-members.

(3) The director may adopt rules for the organization and operation of low-income credit unions including, but not limited to, rules concerning secondary capital accounts and requiring disclosures to the purchasers of the accounts. [2017 c 61 § 11; 2015 c 114 § 10; 2001 c 83 § 16.]

MEMBERS' ACCOUNTS

31.12.416 Shares and deposits governed by chapter 30.22 RCW—Limitation on shares and deposits—Notice of withdrawal—Lien rights. (1) Shares held and deposits made in a credit union by a natural person are governed by *chapter 30.22 RCW.

(2) A credit union may require ninety days notice of a member's intention to withdraw shares or deposits. The notice requirement may be extended with the written consent of the director.

(3) A credit union will have a lien on all shares and deposits, including, but not limited to, dividends, interest, and any other earnings and accumulations thereon, of any share account holder or depositor, to the extent of any obligation owed to the credit union by the share account holder or depositor. [1997 c 397 § 32. Prior: 1994 c 256 § 83; 1994 c 92 § 194; 1984 c 31 § 40. Formerly RCW 31.12.385.]

*Reviser's note: Chapter 30.22 RCW was recodified as chapter 30A.22 RCW pursuant to 2014 c 37 § 4, effective January 5, 2015.

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.418 Dividends. Dividends may be paid from current undivided earnings which remain after deduction of expenses and the amounts required for reserves, or from the undivided earnings that remain from preceding periods. [2015 c 123 § 3; 1997 c 397 § 33; 1984 c 31 § 50. Formerly RCW 31.12.485.]

LOANS TO MEMBERS

31.12.426 Loans—Secured or unsecured loans. (1) A credit union may make secured and unsecured loans to its members under policies established by the board, subject to the loans to one borrower limits provided for in RCW 31.12.428. Each loan must be evidenced by records adequate to support enforcement or collection of the loan and any review of the loan by the director. Loans must be in compliance with rules adopted by the director.

(2) Loans to directors, supervisory committee members, and credit committee members may not be made under more favorable terms and conditions than those made to members generally.

(3) A credit union may obligate itself to purchase loans in accordance with RCW 31.12.436(1)(a), if the credit union's underwriting policies would have permitted it to originate the loans. [2013 c 34 § 7; 2001 c 83 § 17; 1997 c 397 § 34. Prior: 1994 c 256 § 84; 1994 c 92 § 195; 1987 c 338 § 6; 1984 c 31 § 42. Formerly RCW 31.12.406.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.428 Limit on loan amount. (1) No loan may be made to any borrower if the loan would cause the borrower to be indebted to the credit union on all types of loans in an aggregated amount exceeding ten thousand dollars or twenty-five percent of the capital of the credit union, whichever is greater, without the approval of the director.

(2) The director by rule may establish separate limits on business loans to one borrower. [2001 c 83 § 18; 1997 c 397 § 35; 1994 c 256 § 92. Formerly RCW 31.12.317.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Additional notes found at www.leg.wa.gov

INVESTMENTS

31.12.436 Investment of funds—When investment later becomes impermissible. (1) A credit union may invest its funds in any of the following, as long as the investments are deemed prudent by the board:

(a) Loans held by credit unions, out-of-state credit unions, or federal credit unions; loans to members held by other lenders; and loans to nonmembers held by other lenders, with the approval of the director;

(b) Bonds, securities, or other investments that are fully guaranteed as to principal and interest by the United States government, and general obligations of this state and its political subdivisions;

(c) Obligations issued by corporations designated under 31 U.S.C. Sec. 9101, or obligations, participations or other instruments issued and guaranteed by the federal national mortgage association, federal home loan mortgage corporation, government national mortgage association, or other government-sponsored enterprise;

(d) Participations or obligations which have been subjected by one or more government agencies to a trust or trusts for which an executive department, agency, or instrumentality of the United States has been named to act as trustee;

(e) Share or deposit accounts of other financial institutions, the accounts of which are federally insured or insured or guaranteed by another insurer or guarantor approved by

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the director. The shares and deposits made by a credit union under this subsection (1)(e) may exceed the insurance or guarantee limits established by the organization insuring or guaranteeing the institution into which the shares or deposits are made;

(f) Common trust or mutual funds whose investment portfolios consist of securities issued or guaranteed by the federal government or an agency of the government;

(g) Up to five percent of the capital of the credit union, in debt or equity issued by an organization owned by the Northwest credit union association or its successor credit union association;

(h) Shares, stocks, loans, or other obligations of organizations whose primary purpose is to strengthen, advance, or provide services to the credit union industry or credit union members. A credit union may invest in or make loans to organizations under this subsection (1)(h) in an aggregate amount not to exceed ten percent of its assets. This limit does not apply to investments in, and loans to, an organization:

(i) That is wholly owned by one or more credit unions or federal or out-of-state credit unions; and

(ii) Whose activities are limited exclusively to those authorized by this chapter for a credit union;

(i) Loans to credit unions, out-of-state credit unions, or federal credit unions. However, the aggregate of loans issued under this subsection (1)(i) is limited to twenty-five percent of the total shares and deposits of the credit union making the loans;

(j) Key person insurance policies and investment products related to employee benefits, the proceeds of which inure exclusively to the benefit of the credit union;

(k) A registered investment company or collective investment fund, as long as the prospectus of the company or fund restricts the investment portfolio to investments and investment transactions that are permissible for credit unions;

(l) For credit unions that are approved public depositories, any securities listed in RCW 39.58.050 as eligible collateral for public deposits;

(m) Investments of the type in which the state treasurer may invest state funds pursuant to RCW 43.84.080; or

(n) Other investments approved by the director by rule or upon written application.

(2) If a credit union has lawfully made an investment that later becomes impermissible because of a change in circumstances or law, and the director finds that this investment will have an adverse effect on the safety and soundness of the credit union, then the director may require that the credit union develop a reasonable plan for the divestiture of the investment. [2019 c 19 § 6; 2017 c 61 § 12. Prior: 2015 c 123 § 4; 2015 c 114 § 11; 2013 c 34 § 8; 2001 c 83 § 19; 1997 c 397 § 36; prior: 1994 c 256 § 86; 1994 c 92 § 197; 1987 c 338 § 7; 1984 c 31 § 44. Formerly RCW 31.12.425.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.438 Investment in real property or leasehold interests—Limitations—Future expansion—Rules. (1) A credit union may invest in real property or leasehold interests primarily for its own use or the use of a credit union service organization in conducting business, including, but not limited to, structures and fixtures attached to real property, subject to the following limitations:

(a) The credit union's net worth equals at least five percent of the total of its share and deposit accounts;

(b) The board approves the investment; and

(c) The aggregate of all such investments does not exceed seven and one-half percent of the total of its share and deposit accounts.

(2) If the real property or leasehold interest is acquired for future expansion, the credit union must partially occupy the premises within three years after the credit union makes the investment, if the premises are improved at the time of acquisition, or within six years after the credit union makes the investment, if the premises are unimproved at the time of acquisition.

(3) The director may, upon written application, waive any of the limitations listed in subsection (1) or (2) of this section, and the director may adopt rules to interpret this section. [2013 c 34 § 9; 2001 c 83 § 20; 1997 c 397 § 37. Prior: 1994 c 256 § 87; 1994 c 92 § 198; 1984 c 31 § 45. Formerly RCW 31.12.435.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

MERGERS, CONVERSIONS, AND VOLUNTARY LIQUIDATIONS

31.12.461 Mergers. (1) For purposes of this section, a "merging credit union" is a credit union whose charter ceases to exist upon merger with the continuing credit union, and a "continuing credit union" is a credit union whose charter continues upon merger with the merging credit union.

(2) A credit union may be merged with another credit union with the approval by the director of a plan of merger or in accordance with requirements the director may otherwise prescribe. The merger must be approved by a majority vote of the board of each credit union and a majority vote of those members of the merging credit union voting on the merger at a membership meeting. The requirement of approval by the members of the merging credit union may be waived by the director if the merging credit union is in imminent danger of insolvency.

(3) The property, rights, and interests of the merging credit union transfer to and vest in the continuing credit union without deed, endorsement, or instrument of transfer, although instruments of transfer may be used if their use is deemed appropriate. The debts and obligations of the merging credit union that are known or reasonably should be known are assumed by the continuing credit union.

(4) The continuing credit union shall cause to be published notice of merger once a week for three consecutive weeks in a newspaper of general circulation in the county in which the principal place of business of the merging credit union is located.

(5) The notice of merger must also inform creditors of the merging credit union how to make a claim on the continuing credit union, and that if a claim is not made upon the continuing credit union within thirty days of the last date of publication, creditors' claims that are not known by the continuing credit union are thereafter barred.

(6) Except for claims filed as requested by the notice, or debts or obligations that are known or reasonably should be known by the continuing credit union, the debts and obligations of the merging credit union are discharged.

(7) Upon merger, the charter of the merging credit union ceases to exist.

(8) Mergers are effective after the thirty-day notice period to creditors and all regulatory waiting periods have expired, and upon filing of the credit union's articles of merger by the secretary of state, or a later date stated in the articles, which in no event may be later than ninety days after the articles are filed. [2015 c 114 § 12; 2014 c 8 § 1; 2013 c 34 § 10; 2001 c 83 § 21; 1997 c 397 § 40. Prior: 1994 c 256 § 91; 1994 c 92 § 220; 1987 c 338 § 8; 1984 c 31 § 71. Formerly RCW 31.12.695.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.464 Merger or conversion of state into federal, out-of-state, or foreign credit union, or other type of financial institution. (1) A credit union may merge or convert into a federal credit union as authorized by the federal credit union act. The merger or conversion must be approved by a majority vote of those credit union members voting at a membership meeting, unless the credit union prescribes in its bylaws a higher percentage approval vote than a simple majority.

(2) If the merger or conversion is approved by the members, a copy of the resolution certified by the secretary must be filed with the director within ten days of approval. The board may effect the merger or conversion upon terms agreed by the board and the federal regulator.

(3) A certified copy of the federal credit union charter or authorization issued by the federal regulator must be filed with the director and thereupon the credit union ceases to exist except for the purpose of winding up its affairs and prosecuting or defending any litigation by or against the credit union. For all other purposes, the credit union is merged or converted into a federal credit union and the credit union may execute, acknowledge, and deliver to the successor federal credit union the instruments of transfer, conveyance, and assignment that are necessary or desirable to complete the merger or conversion, and the property, tangible or intangible, and all rights, titles, and interests that are agreed to by the board and the federal regulator.

(4) Mergers and conversions are effective after all applicable regulatory waiting periods have expired and upon filing of the credit union's articles of merger or articles of conversion, as appropriate, by the secretary of state, or a later date stated in the articles, which in no event may be later than ninety days after the articles are filed.

(5) Procedures, similar to those contained in subsections (1) through (4) of this section, prescribed by the director must be followed when a credit union merges or converts into an out-of-state or foreign credit union, or other type of financial institution. [2015 c 114 § 13; 2001 c 83 § 22; 1997 c 397 § 41; 1994 c 92 § 221; 1984 c 31 § 72. Formerly RCW 31.12.705.]

31.12.467 Merger or conversion of federal, out-of-state, or foreign to state credit union. (1) A federal credit union located and conducting business in this state may merge or convert into a credit union organized and operating under this chapter.

(2) In the case of a conversion, the board of the federal credit union shall file with the director proposed articles of

incorporation and bylaws, as provided by this chapter for organizing a new credit union. If the conversion is approved by the director, the federal credit union becomes a credit union under the laws of this state.

(3) The assets and liabilities of the federal credit union will vest in and become the property of the successor credit union subject to all existing liabilities against the federal credit union. Members of the federal credit union may become members of the successor credit union.

(4) Mergers and conversions are effective after all applicable regulatory waiting periods have expired and upon filing of the federal credit union's articles of merger or articles of conversion, as appropriate, by the secretary of state, or a later date stated in the articles, which in no event may be later than ninety days after the articles are filed.

(5) Procedures, similar to those contained in subsections (1) through (4) of this section, prescribed by the director must be followed when an out-of-state or foreign credit union wishes to merge or convert into a credit union organized and operating under this chapter. [2001 c 83 § 23; 1997 c 397 § 42; 1994 c 92 § 222; 1984 c 31 § 73. Formerly RCW 31.12.715.]

31.12.471 Authority of out-of-state or foreign credit union to operate in this state—Conditions—Rules. (1) An out-of-state or foreign credit union may not operate a branch in Washington unless:

(a) The director has approved its application in accordance with this section;

(b) A credit union organized and operating under this chapter is permitted to do business in the state or foreign jurisdiction in which the credit union is organized;

(c) The interest rate charged by the credit union on loans made to members residing in this state does not exceed the maximum interest rate permitted in the state or jurisdiction in which the credit union is organized, or exceed the maximum interest rate that a credit union organized and operating under this chapter is permitted to charge on similar loans, whichever is lower;

(d) The credit union has secured surety bond and fidelity bond coverages satisfactory to the director;

(e) The credit union's share and deposit accounts are insured under the federal share insurance program or an equivalent share insurance program in compliance with RCW 31.12.408;

(f) The credit union submits to the director an annual examination report of its most recently completed fiscal year;

(g) The credit union has not had its authority to do business in another state or foreign jurisdiction suspended or revoked;

(h) The credit union complies with:

(i) The provisions concerning field of membership in this chapter and rules adopted by the director; and

(ii) Such other provisions of this chapter and rules adopted by the director, as determined by the director; and

(i) In addition, if the credit union is a foreign credit union:

(i) A treaty or agreement between the United States and the jurisdiction where the credit union is organized requires the director to permit the credit union to operate a branch in Washington; and

(ii) The director determines that the credit union has substantially the same characteristics as a credit union organized and operating under this chapter.

(2) The director shall deny an application filed under this section or, upon notice and an opportunity for hearing, suspend or revoke the approval of an application, if the director finds that the standards of organization, operation, and regulation of the applicant do not reasonably conform with the standards under this chapter. In considering the standards of organization, operation, and regulation of the applicant, the director may consider the laws of the state or foreign jurisdiction in which the applicant is organized. A decision under this subsection may be appealed under chapter 34.05 RCW.

(3) In implementing this section, the director may cooperate with credit union regulators in other states or jurisdictions and may share with the regulators the information received in the administration of this chapter.

(4) The director may enter into supervisory agreements with out-of-state and foreign credit unions and their regulators to prescribe the applicable laws governing the powers and authorities of Washington branches of the out-of-state or foreign credit unions. The director may also enter into supervisory agreements with the credit union regulators in other states or foreign jurisdictions to prescribe the applicable laws governing the powers and authorities of out-of-state or foreign branches and other facilities of credit unions. The agreements may address, but are not limited to, corporate governance and operational matters. The agreements may resolve any conflict of laws, and specify the manner in which the examination, supervision, and application processes must be coordinated with the regulators.

(5) A person, other than a credit union, out-of-state credit union, or foreign credit union, may not hold itself out in this state as engaging in the business of a credit union unless it is a credit union under this chapter, a federal credit union, an out-of-state credit union, or a foreign credit union.

(6) A person, wherever domiciled and regardless of the location or mode of its business, may not designate itself as or use the term "credit union" to refer to itself in any communication for purpose of conducting credit union business with a resident of the state of Washington, unless such person is a credit union under this chapter, federal credit union, out-of-state credit union, or foreign credit union.

(7) The director may adopt rules for the periodic examination and investigation of the affairs of an out-of-state credit union or foreign credit union operating a branch in this state. [2015 c 114 § 14; 2001 c 83 § 24; 1997 c 397 § 43. Prior: 1994 c 256 § 88; 1994 c 92 § 205; 1984 c 31 § 54. Formerly RCW 31.12.526.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.474 Liquidation—Disposition of unclaimed funds. (1) At a special meeting called for the purpose of liquidation, and upon the recommendation of at least two-thirds of the total members of the board of a credit union, the members of a credit union may elect to liquidate the credit union by a two-thirds majority vote of those members voting.

(2) Upon a vote to liquidate under subsection (1) of this section, a three-person liquidating committee must be elected to liquidate the assets of the credit union. The committee shall act in accordance with any requirements of the director

and may be reasonably compensated by the board of the credit union. Each share account holder and depositor at the credit union is entitled to his, her, or its proportionate part of the assets in liquidation after all shares, deposits, and debts have been paid. The proportionate allocation shall be based on account balances as of a date determined by the board. For the purposes of liquidation, shares and deposits are equivalent. The assets of the liquidating credit union are not subject to contingent liabilities. Upon distribution of the assets, the credit union ceases to exist except for the purpose of discharging existing liabilities and obligations.

(3) Funds representing unclaimed dividends in liquidation and remaining in the hands of the liquidating committee for six months after the date of the final dividend must be deposited, together with all the books and papers of the credit union, with the director. The director may, one year after receipt, destroy such records, books, and papers as, in the director's judgment, are obsolete or unnecessary for future reference. The funds may be deposited in one or more financial institutions to the credit of the director, in trust for the members of the credit union entitled to the funds. The director may pay a portion of the funds to a person upon receipt of satisfactory evidence that the person is entitled to the funds. In case of doubt or conflicting claims, the director may require an order of the superior court of the county in which the principal place of business of the credit union was located, authorizing and directing the payment of the funds. The director may apply the interest earned by the funds toward defraying the expenses incurred in the holding and paying of the funds. Five years after the receipt of the funds, the funds still remaining with the director must be remitted to the state as unclaimed property. [2001 c 83 § 25; 1997 c 397 § 44; 1994 c 92 § 223; 1984 c 31 § 74. Formerly RCW 31.12.725.]

Uniform unclaimed property act: Chapter 63.29 RCW.

EXAMINATION AND SUPERVISION

31.12.516 Powers of director. (1) The powers of supervision and examination of credit unions and other persons subject to this chapter and chapter 31.13 RCW are vested in the director.

(2) The director shall require each credit union to conduct business in compliance with this chapter and may require each credit union to conduct business in compliance with other state and federal laws that apply to credit unions.

(3) The director has the power to commence and prosecute actions and proceedings against and enjoin violations of this chapter and chapter 31.13 RCW by any person holding itself out to be a credit union, federal credit union, out-of-state credit union, foreign credit union, or corporate credit union. The director may, in connection with such enforcement of this chapter and chapter 31.13 RCW, collect sums, including fines, costs, and reasonable attorneys' fees for actions commenced or prosecuted on its behalf.

(4) Upon a written finding, the director may temporarily suspend or restrict withdrawal of deposits in a credit union.

(5) The director may adopt such rules as are reasonable or necessary to carry out the purposes of this chapter and chapter 31.13 RCW.

(6) Chapter 34.05 RCW, whenever applicable, governs the rights, remedies, and procedures respecting the administration of this chapter.

(7) The director may by rule provide appropriate relief for small credit unions from requirements under this chapter or rules of the director. However, small credit unions must still comply with RCW 31.12.408.

(8) The director shall have the power and broad administrative discretion to administer and interpret the provisions of this chapter and chapter 31.13 RCW, to facilitate the delivery of financial services to the members of a credit union.

(9) Nonfederally insured credit unions, nonfederally insured out-of-state credit unions, and nonfederally insured foreign credit unions operating in this state as permitted by RCW 31.12.408 and 31.12.471, as applicable, must comply with safety and soundness requirements established by the director.

(10) The director may charge fees to credit unions and other persons subject to examination and investigation under this chapter and chapter 31.13 RCW, and to other parties where the division contracts out its services, in order to cover the costs of the operation of the division of credit unions, and to establish a reasonable reserve for the division. The director may waive all or a portion of the fees. [2015 c 114 § 15; 2010 c 87 § 4; 2001 c 83 § 26; 1997 c 397 § 45; 1994 c 92 § 204; 1984 c 31 § 53.]

31.12.518 Powers of director under chapter 19.144 RCW. The director or the director's designee may take such action as provided for in this chapter to enforce, investigate, or examine persons covered by chapter 19.144 RCW. [2008 c 108 § 17.]

Findings—2008 c 108: See RCW 19.144.005.

31.12.545 Examinations and investigations—Reports—Access to records—Oaths—Subpoenas. (1) The director shall make an examination and investigation into the affairs of each credit union at least once every eighteen months, unless the director determines with respect to a credit union, that a less frequent examination schedule will satisfactorily protect the financial stability of the credit union and will satisfactorily assure compliance with the provisions of this chapter.

(2) In regard to credit unions, and out-of-state and foreign credit unions permitted to operate a branch in Washington pursuant to RCW 31.12.471, the director:

(a) Shall have full access to the credit union's books and records and files, including but not limited to computer files;

(b) May appraise and revalue the credit union's investments; and

(c) May require the credit union to charge off or set up a special reserve for loans and investments.

(3) The director may make an examination and investigation into the affairs of:

(a) An out-of-state or foreign credit union permitted to operate a branch in Washington pursuant to RCW 31.12.471;

(b) A nonpublicly held organization, or its subsidiary, in which a credit union has a material investment;

(c) A publicly held organization the capital stock or equity of which is controlled by a credit union;

(d) A credit union service organization, or any tier subsidiary of a credit union service organization, in which a credit union has an interest;

(e) An organization that is not a credit union, out-of-state credit union, federal credit union, or foreign credit union, and that has a majority interest in a credit union service organization in which a credit union has an interest;

(f) A sole proprietorship or organization primarily in the business of managing one or more credit unions;

(g) A person providing electronic data processing services to a credit union or to a credit union service organization; or

(h) A corporation or other business entity that provides alternative share insurance in accordance with RCW 31.12.408.

The director shall have full access to the books, records, personnel, and files, including but not limited to computer files, of persons described in this subsection.

(4) In connection with examinations and investigations, the director may:

(a) Administer oaths and examine under oath any person concerning the affairs of any credit union or of any person described in subsection (3) of this section; and

(b) Issue subpoenas to and require the attendance and testimony of any person at any place within this state, and require witnesses to produce any books and records and files, including but not limited to computer files, that are material to an examination or investigation.

(5) The director may accept in lieu of an examination under this section:

(a) The report of an examiner authorized to examine a credit union or an out-of-state, federal, or foreign credit union, or other financial institution; or

(b) The report of an accountant, satisfactory to the director, who has made and submitted a report of the condition of the affairs of a credit union or an out-of-state, federal, or foreign credit union, or other financial institution. The director may accept all or part of such a report in lieu of all or part of an examination. The accepted report or accepted part of the report has the same force and effect as an examination under this section. [2015 c 114 § 16; 2010 c 87 § 5; 2001 c 83 § 27; 1997 c 397 § 46; 1994 c 92 § 207; 1984 c 31 § 56.]

31.12.565 Examination reports and specified other information confidential—Exceptions—Penalty. (1) The following are confidential and privileged and not subject to public disclosure under chapter 42.56 RCW:

(a) Examination reports and information obtained by the director in conducting examinations and investigations under this chapter and chapter 31.13 RCW;

(b) Examination reports and related information from other financial institution regulators obtained by the director;

(c) Reports or parts of reports accepted in lieu of an examination under RCW 31.12.545; and

(d) Business plans and other proprietary information obtained by the director in connection with a credit union's application or notice to the director.

(2) Notwithstanding subsection (1) of this section, the director may furnish examination reports[,], work papers, final orders, or other information obtained in the conduct of an examination or investigation prepared by the director to:

(a) Federal agencies empowered to examine credit unions or other financial institutions;

(b) Officials empowered to investigate criminal charges. The director may furnish only that part of the report which is necessary and pertinent to the investigation, and only after notifying the affected credit union and members of the credit union who are named in that part of the examination report, or other person examined, that the report is being furnished to the officials, unless the officials requesting the report obtain a waiver of the notice requirement for good cause from a court of competent jurisdiction;

(c) The examined credit union or other person examined, solely for its confidential use;

(d) The attorney general in his or her role as legal advisor to the director;

(e) Prospective merger partners or conservators, receivers, or liquidating agents of a distressed credit union;

(f) Credit union regulators in other states or foreign jurisdictions regarding an out-of-state or foreign credit union conducting business in this state under this chapter, or regarding a credit union conducting business in the other state or jurisdiction;

(g) A person officially connected with the credit union or other person examined, as officer, director, supervisory committee member, attorney, auditor, accountant, independent attorney, independent auditor, or independent accountant;

(h) Organizations that have bonded the credit union to the extent that information is relevant to the renewal of the bond coverage or to a claim under the bond coverage;

(i) Organizations insuring or guaranteeing the shares of, or deposits in, the credit union; or

(j) Other persons as the director may determine necessary to protect the public interest and confidence.

(3) Examination reports, work papers, temporary and final orders, consent orders, and other information obtained in the conduct of an examination or investigation furnished under subsection (2) of this section remain the property of the director and no person to whom reports are furnished or any officer, director, or employee thereof may disclose or make public the reports or information contained in the reports except in published statistical information that does not disclose the affairs of a person, except that nothing prevents the use in a criminal prosecution of reports furnished under subsection (2)(b) of this section.

(4) In a civil action in which the reports or information are sought to be discovered or used as evidence, a party may, upon notice to the director, petition the court for an in-camera review of the reports or information. The court may permit discovery and introduction of only those portions of the report or information which are relevant and otherwise unobtainable by the requesting party. This subsection does not apply to an action brought or defended by the director.

(5) This section does not apply to investigation reports prepared by the director concerning an application for a new credit union or a notice of intent to establish a branch of a credit union, except that the director may adopt rules making portions of the reports confidential, if in the director's opinion the public disclosure of that portion of the report would impair the ability to obtain information the director considers necessary to fully evaluate the application.

(6) Any person who knowingly violates a provision of this section is guilty of a gross misdemeanor. [2010 c 87 § 6; 2005 c 274 § 254; 2001 c 83 § 28; 1997 c 397 § 48. Prior: 1994 c 256 § 90; 1994 c 92 § 209; 1984 c 31 § 58.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Examination reports and information from financial institutions exempt: RCW 42.56.400.

31.12.567 Reports—Financial and statistical data—As required by director. A credit union shall file with the director any financial and statistical report that it is required to file with the national credit union administration. Each report must be certified by the principal operating officer of the credit union. In addition, a credit union shall file reports as may be required by the director. [2001 c 83 § 29; 1997 c 397 § 49.]

31.12.569 Generally accepted accounting principles. Credit unions will comply with the provisions of United States generally accepted accounting principles as required by federal law or rule of the director. In adopting rules to implement this section, the director shall consider, among other relevant factors, whether to transition small credit unions to generally accepted accounting principles over a period of time. [2010 c 87 § 7; 2001 c 83 § 30; 1997 c 397 § 50.]

Additional notes found at www.leg.wa.gov

31.12.571 Notice of intent to establish branch—Another state or foreign jurisdiction. A credit union desiring to establish a branch in another state or a foreign jurisdiction shall submit to the director a notice of intent to establish the branch at least thirty days before conducting business at the branch. [2001 c 83 § 31; 1997 c 397 § 51; 1994 c 92 § 190; 1984 c 31 § 23. Formerly RCW 31.12.215.]

31.12.575 Removal or prohibition orders—Director's authority—Notice. The director may issue and serve a credit union director, supervisory committee member, officer, or employee with written notice of intent to remove the person from office or employment or to prohibit the person from participating in the conduct of the affairs of the credit union or any other depository institution, trust company, bank holding company, thrift holding company, or financial holding company doing business in Washington state in accordance with RCW 31.12.625 whenever, in the opinion of the director:

(1)(a) The person has committed a material violation of law or an unsafe or unsound practice; or

(b) The person has committed a violation or practice involving personal dishonesty, recklessness, or incompetence; and

(2)(a) The credit union has suffered or is likely to suffer substantial financial loss or other damage; or

(b) The interests of the credit union's share account holders and depositors could be seriously prejudiced by reason of the violation or practice. [2015 c 114 § 17; 2010 c 87 § 8; 2001 c 83 § 32; 1997 c 397 § 52; 1994 c 92 § 210; 1984 c 31 § 59.]

31.12.580 Contents of notice under RCW 31.12.575—Hearing—Order. (1) A notice under RCW 31.12.575 must contain a statement of the facts that constitute grounds for removal or prohibition and must fix a time and place at which a hearing will be held. If the notice under RCW 31.12.575 is accompanied by a notice of suspension under RCW 31.12.372, the notice of suspension must reference the statement of facts in the notice under RCW 31.12.575 as the basis for its issuance.

(2) The hearing must be set not earlier than ten days after the date of service of the notice or later than thirty days after the date of service of the notice unless an earlier or later date is set by the director at the request of the credit union director, supervisory committee member, officer, or employee for good cause shown or of the attorney general of the state.

(3) Unless the credit union director, supervisory committee member, officer, or employee, after being served with the notice, appears at the hearing personally or by a duly authorized representative, the person is deemed to have consented to the issuance of an order of removal or prohibition or both. In the event of such consent or if upon the record made at the hearing the director finds that any of the grounds specified in the notice have been established, the director may issue such orders of removal from office or prohibition from participation in the conduct of the affairs of the credit union or any other depository institution, trust company, bank holding company, thrift holding company, or financial holding company doing business in Washington state as the director may consider appropriate.

(4) An order becomes effective at the expiration of ten days after service upon the credit union and the credit union director, supervisory committee member, officer, or employee concerned, except that an order issued upon consent becomes effective at the time specified in the order.

(5) An order remains effective except to the extent it is stayed, modified, terminated, or set aside by the director or a reviewing court. [2015 c 114 § 18.]

31.12.585 Prohibited acts—Notice—Cease and desist order. (1) The director may issue and serve any person regulated by this chapter with a written notice of charges and intent to issue a cease and desist order if, in the opinion of the director, the person has committed or is about to commit:

(a) A material violation of law; or

(b) An unsafe or unsound practice.

(2) Upon taking effect, the order may require the person and its directors, supervisory committee members, officers, employees, and agents to cease and desist from the violation or practice and may require them to take affirmative action to correct the conditions resulting from the violation or practice. [2015 c 114 § 19; 2010 c 87 § 9; 2001 c 83 § 33; 1997 c 397 § 53; 1994 c 92 § 211; 1984 c 31 § 60.]

31.12.595 Temporary cease and desist order—Notice—Principal place of business—Superior court. (1) If the director determines that the violation or practice specified in RCW 31.12.585 is likely to cause an unsafe or unsound condition at a credit union or a credit union service organization, or the public is likely to be substantially injured by delay in issuing a cease and desist order, the director may immediately issue and serve a temporary cease and desist

order upon the credit union, credit union service organization, or other applicable person identified in RCW 31.12.545(3). The order may require the credit union, credit union service organization, or other applicable person under RCW 31.12.545(3), and its directors, supervisory committee members, officers, employees, and agents, to cease and desist from the violation or practice and may require them to take affirmative action to correct the conditions resulting from the violation or practice.

(2) With the temporary order, the director shall serve a notice of charges and intent to issue a cease and desist order under RCW 31.12.585 in the matter.

(3) The temporary order becomes effective upon service on the person and remains effective until completion of the administrative proceedings under the notice issued under subsection (2) of this section.

(4) Within ten days after a person has been served with a temporary order, the credit union may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings under the notice issued under subsection (2) of this section.

(5) In the case of a violation or threatened violation of a temporary order, the director may apply to the superior court of the county of the principal place of business of the person for an injunction to enforce the order, and the court shall issue an injunction if it determines that there has been a violation or threatened violation.

(6) For the purposes of this section, the principal place of business of a foreign or out-of-state credit union, out-of-state credit union service organization, or other out-of-state person under RCW 31.12.545(3) is Thurston county. [2015 c 114 § 20; 2010 c 87 § 10; 2001 c 83 § 34; 1997 c 397 § 54; 1994 c 92 § 212; 1984 c 31 § 61.]

31.12.625 Administrative hearing—Procedures. An administrative hearing on the notice provided for in RCW 31.12.575 and 31.12.585 must be conducted in accordance with chapter 34.05 RCW, and may be conducted by the director or the director's designee. To the extent the requirements of this chapter are inconsistent with chapter 34.05 RCW, this chapter will govern. The hearing may be held at such place as is designated by the director. The hearing shall be private unless the director determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing. [2010 c 87 § 11; 2001 c 83 § 35; 1997 c 397 § 56; 1994 c 92 § 214; 1984 c 31 § 64.]

31.12.630 Authority of director to call special meeting of board. The director may request a special meeting of the board of a credit union if the director believes that a special meeting is necessary for the welfare of the credit union or the purposes of this chapter. The director's request for a special board meeting must be made in writing to the secretary of the board. On receipt of such a request, the secretary shall designate a time and place for the special board meeting, which shall be held within thirty days after receipt of the request. The director may require the attendance of all of the directors at the special board meeting, and an absence unexcused by the director constitutes a violation of this chapter.

[2013 c 34 § 11; 1997 c 397 § 58; 1994 c 92 § 216; 1984 c 31 § 67. Formerly RCW 31.12.655.]

31.12.633 Authority of director to attend meetings of the board. The director may attend a meeting of the board of a credit union if the director believes that attendance at the meeting is necessary for the welfare of the credit union, or the purposes of this chapter, or if the board has requested the director's attendance. The director shall provide reasonable notice to the board before attending a meeting. [1997 c 397 § 59; 1994 c 92 § 217; 1984 c 31 § 68. Formerly RCW 31.12.665.]

31.12.637 Intervention by director—Conditions. The director may place a credit union under supervisory direction in accordance with RCW 31.12.641 through 31.12.647, appoint a conservator for a credit union in accordance with RCW 31.12.651 through 31.12.661, appoint a liquidating agent for a credit union in accordance with RCW 31.12.664 and 31.12.667, or appoint a receiver for a credit union in accordance with RCW 31.12.671 through 31.12.724, if the credit union:

- (1) Consents to the action;
- (2) Has failed to comply with the requirements of the director while the credit union is under supervisory direction;
- (3) Has committed or is about to commit a material violation of law or an unsafe or unsound practice, and such violation or practice has caused or is likely to cause an unsafe or unsound condition at the credit union; or
- (4) Is in an unsafe or unsound condition. [1997 c 397 § 60.]

31.12.641 Supervision by director—Notice—Compliance—Costs. (1) As authorized by RCW 31.12.637, the director may determine to place a credit union under supervisory direction. Upon such a determination, the director shall notify the credit union in writing of:

- (a) The director's determination; and
 - (b) Any requirements that must be satisfied before the director shall terminate the supervisory direction.
- (2) The credit union must comply with the requirements of the director as provided in the notice. If the credit union fails to comply with the requirements, the director may appoint a conservator, liquidating agent, or receiver for the credit union, in accordance with this chapter. The director may appoint a representative to supervise the credit union during the period of supervisory direction.
- (3) All costs incident to supervisory direction will be a charge against the assets of the credit union to be allowed and paid as the director may determine. [1997 c 397 § 61.]

31.12.644 Supervision by director—Certain acts prohibited. During the period of supervisory direction, the director may prohibit the credit union from engaging in any of the following acts without prior approval:

- (1) Disposing of, conveying, or encumbering any of its assets;
- (2) Withdrawing any of its accounts at other financial institutions;
- (3) Lending any of its funds;
- (4) Investing any of its funds;

(5) Transferring any of its property; or

(6) Incurring any debt, obligation, or liability. [1997 c 397 § 62.]

31.12.647 Supervision by director—Credit union request for review. During the period of supervisory direction, the credit union may request the director to review an action taken or proposed to be taken by the representative, specifying how the action is not in the best interests of the credit union. The request stays the action, pending the director's review of the request. [1997 c 397 § 63.]

31.12.651 Conservator—Authorized actions—Costs.

(1) As authorized by RCW 31.12.637, the director may, upon due notice and hearing conducted by the director or the director's designee, appoint a conservator for a credit union. The director may appoint himself or herself or another qualified party as conservator of the credit union. The conservator shall immediately take charge of the credit union and all of its property, books, records, and effects.

(2) The conservator shall conduct the business of the credit union and take such steps toward the removal of the causes and conditions that have necessitated the appointment of a conservator, as the director may direct. The conservator is authorized to, without limitation:

(a) Take all necessary measures to preserve, protect, and recover any assets or property of the credit union, including any claim or cause of action belonging to or which may be asserted by the credit union, and administer the same in his or her own name as conservator; and

(b) File, prosecute, and defend any suit that has been filed or may be filed by or against the credit union that is deemed by the conservator to be necessary to protect all of the interested parties or a property affected thereby.

The conservator shall make such reports to the director from time to time as may be required by the director.

(3) All costs incident to conservatorship will be a charge against the assets of the credit union to be allowed and paid as the director may determine.

(4) If at any time the director determines that the credit union is not in condition to continue business under the conservator in the interest of its share account holders, depositors, or creditors, and grounds exist under RCW 31.12.637, the director may proceed with appointment of a liquidating agent or receiver in accordance with this chapter.

(5) The director, the department and its employees, and third parties acting as conservators are not subject to liability for actions under this section, and no departmental funds may be required to be expended on behalf of the credit union, or its creditors, employees, members, or any other party or entity. [2010 c 87 § 12; 1997 c 397 § 64.]

31.12.654 Actions by conservator—Review. During the period of conservatorship, the credit union may request the director to review an action taken or proposed to be taken by the conservator, specifying how the action is not in the best interest of the credit union. The request stays the action, pending the director's review of the request. [1997 c 397 § 65.]

31.12.657 Lawsuits during period of conservatorship. Any suit filed against a credit union or its conservator, during the period of conservatorship, must be brought in the superior court of Thurston county. A conservator for a credit union may file suit in any superior court or other court of competent jurisdiction against any person for the purpose of preserving, protecting, or recovering any asset or property of the credit union, including, but not limited to, any claims or causes of action belonging to or asserted by the credit union. [1997 c 397 § 66.]

31.12.661 Conservator serves until purposes are accomplished. The conservator shall serve until the purposes of the conservatorship have been accomplished. If rehabilitated, the credit union must be returned to management or new management under such conditions as the director may determine. [1997 c 397 § 67.]

31.12.664 Liquidation—Suspension or revocation of articles—Placement in involuntary liquidation—Appointment of liquidating agent—Notice—Procedure—Effect. (1) As authorized by RCW 31.12.637, the director may appoint a liquidating agent for a credit union. Before appointing a liquidating agent, the director shall issue and serve notice on the credit union an order directing the credit union to show cause why its articles of incorporation should not be suspended or revoked, in accordance with chapter 34.05 RCW.

(2) If the credit union fails to adequately show cause, the director shall serve the credit union with an order directing the suspension or revocation of the articles of incorporation, placing the credit union in involuntary liquidation, appointing a liquidating agent under this section and RCW 31.12.667, and providing a statement of the findings on which the order is based.

(3) The suspension or revocation must be immediate and complete. Once the articles of incorporation are suspended or revoked, the credit union shall cease conducting business. The credit union may not accept any payment to share or deposit accounts, may not grant or pay out any new or previously approved loans, may not invest any of its assets, and may not declare or pay out any previously declared dividends. The liquidating agent of a credit union whose articles have been suspended or revoked may accept payments on loans previously paid out and may accept income from investments already made. [1997 c 397 § 68; 1994 c 92 § 218; 1984 c 31 § 69. Formerly RCW 31.12.675.]

31.12.667 Order directing involuntary liquidation—Procedure. (1) On receipt of the order placing the credit union in involuntary liquidation, the officers and directors of the credit union shall deliver to the liquidating agent possession and control of all books, records, assets, and property of the credit union.

(2) The liquidating agent shall proceed to convert the assets to cash, collect all debts due to the credit union and wind up its affairs in accordance with any instructions and procedures issued by the director. If a liquidating agent agrees to absorb and serve the membership of the credit union, the director may approve a pooling of assets and liabilities rather than a distribution of assets.

(3) Each share account holder and depositor at the credit union is entitled to a proportionate allocation of the assets in liquidation after all shares, deposits, and debts have been paid.

The proportionate allocation shall be based on account balances as of a date determined by the board. For the purposes of liquidation, shares and deposits are equivalent.

(4) The liquidating agent shall cause a notice of liquidation to be published once a week for three consecutive weeks in a newspaper of general circulation in the county in which the principal place of business of the credit union is located. The notice of liquidation must inform creditors of the credit union on how to make a claim upon the liquidating agent, and that if a claim is not made upon the liquidating agent within thirty days of the last date of publication, the creditor's claim is barred. The liquidating agent shall provide personal notice of liquidation to the creditors of record, informing them that if they fail to make a claim upon the liquidating agent within thirty days of the service of the notice, the creditor's claim is barred. If a creditor fails to make a claim upon the liquidating agent within the times required to be specified in the notices of liquidation, the creditor's claim is barred. All contingent liabilities of the credit union are discharged upon the director's order to liquidate the credit union. The liquidating agent shall, upon completion, certify to the director that the distribution or pooling of assets of the credit union is complete. [1997 c 397 § 69; 1994 c 92 § 219; 1984 c 31 § 70. Formerly RCW 31.12.685.]

31.12.671 Receivership—Appointment of receiver by director—Notice—Act without bond. (1) As authorized by RCW 31.12.637, the director may without prior notice appoint a receiver to take possession of a credit union. The director may appoint the national credit union administration or other qualified party as receiver. Upon appointment, the receiver is authorized to act without bond. Upon acceptance of the appointment, the receiver shall have and possess all the powers and privileges provided by the laws of this state with respect to the receivership of a credit union, and be subject to all the duties of and restrictions applicable to such a receiver, except insofar as such powers, privileges, duties, or restrictions are in conflict with any applicable provision of the federal credit union act.

Upon taking possession of the credit union, the receiver shall give written notice to the directors of the credit union and to all persons having possession of any assets of the credit union. No person with knowledge of the taking of possession by the receiver shall have a lien or charge for any payment advanced, clearance made, or liability incurred against any of the assets of the credit union, after the receiver takes possession, unless approved by the receiver.

(2) The director, the department and its employees, and any third-party receiver acting on behalf of the department are not subject to liability for actions taken pursuant to appointment of a receiver under this section. Funds of the department may not be required to be expended on behalf of the credit union or its members, directors, officers, employees, or any other person. [2010 c 87 § 13; 1997 c 397 § 70.]

31.12.674 Director's orders—Notice to director of hearing—Hearing—Principal place of business—Superior court.

(1) Within ten days after the director issues an order of involuntary liquidation of a credit union pursuant to RCW 31.12.664(2) or order appointing a receiver for a credit union pursuant to RCW 31.12.671, the credit union may serve a notice upon the director to appear at a hearing before the superior court of the county in which the principal place of business of the credit union is located and at a time to be fixed by the court, which may not be less than five or more than fifteen days from the date of the service of the notice. At the hearing, the credit union has the burden to show cause why the director's action ordering involuntary liquidation or appointing a receiver should not be affirmed.

(2) The court shall summarily hear and dismiss the complaint if it finds that the order of involuntary liquidation or order appointing receiver was issued for cause. However, if the court finds that no cause existed for the order of involuntary liquidation or order appointing receiver, the court shall require the director to restore the credit union to possession of its assets and enjoin the director from involuntary liquidation of the credit union or further appointment of a receiver for the credit union without cause.

(3) Failure of the credit union to serve notice of show cause hearing on the director as required under subsection (1) of this section bars a credit union from any judicial review of a director's order of involuntary liquidation under RCW 31.12.664(2) or of a director's appointment of receiver under RCW 31.12.671.

(4) For the purposes of this section, the principal place of business of a foreign or out-of-state credit union is Thurston county. [2015 c 114 § 21; 2010 c 87 § 14; 1997 c 397 § 71.]

31.12.677 Powers and duties of receiver. Upon taking possession of a credit union, the receiver shall proceed to collect the assets of the credit union and preserve, administer, and liquidate its business and assets.

With the approval of the Thurston county superior court or the superior court of the county in which the principal place of business of the credit union is located, the receiver may sell, compound, or compromise bad or doubtful debts, and upon such terms as the court may direct, borrow, mortgage, pledge, or sell all or any part of the real and personal property of the credit union. The receiver may deliver to each purchaser or lender an appropriate deed, mortgage, agreement of pledge, or other instrument of title or security. The receiver may employ an attorney or other assistants to assist in carrying out the receivership, subject to such surety bond as the director may require. The premium for any such bond must be paid out of the assets of the credit union.

In carrying out the receivership, the receiver may without limitation arrange for the merger or consolidation of the credit union in receivership with another credit union, out-of-state credit union, or federal credit union, or may arrange for the purchase of the credit union's assets and the assumption of its liabilities by such a credit union, in whole or in part, or may arrange for such a transaction with another type of financial institution as may be otherwise permitted by law. The receiver shall give preference to transactions with a credit union or a federal credit union that has its principal place of business in this state. [1997 c 397 § 72.]

31.12.681 Claims against credit union in receivership—Notice. The receiver shall publish once a week for four consecutive weeks in a newspaper of general circulation in the county where the credit union's principal place of business is located, a notice requiring all persons having claims against the credit union to file proof of claim not later than ninety days from the date of the first publication of the notice. The receiver shall mail similar notices to all persons whose names appear as creditors upon the books of the credit union. The assets of the credit union are not subject to contingent claims.

After the expiration of the time fixed in the notice, the receiver has no power to accept any claim except the claim of a depositor or share account holder, and all other claims are barred. Claims of depositors or share account holders may be presented after the expiration of the time fixed in the notice and may be approved by the receiver. If such a claim is approved, the depositor or share account holder is entitled to its proportion of prior liquidation dividends, if sufficient funds are available for it, and will share in the distribution of the remaining assets.

The receiver may approve or reject any claim, but shall serve notice of rejection upon the claimant by mail or personally. An affidavit of service of the notice of rejection will serve as prima facie evidence that notice was given. No action may be brought on any claim after three months from the date of service of the notice of rejection. [1997 c 397 § 73.]

31.12.684 Receiver shall inventory assets—File lists of assets and claims—Objections to approved claims. Upon taking possession of the credit union, the receiver shall make an inventory of the assets and file the list in the office of the county clerk. Upon the expiration of the time fixed for the presentation of claims, the receiver shall make a list of claims presented, segregating those approved and those rejected, to be filed in the office of the county clerk. The receiver shall also make and file with the office of the county clerk a supplemental list of claims at least fifteen days before the declaration of any liquidation dividend, and in any event at least every six months.

Objection may be made by any interested person to any claim approved by the receiver. Objections to claims approved by the receiver will be resolved by the court after providing notice to both the claimant and objector, as the court may prescribe. [1997 c 397 § 74.]

31.12.687 Expenses incurred by receiver. All expenses incurred by the receiver in relation to the receivership of a credit union, including, but not limited to, reasonable attorneys' fees, become a first charge upon the assets of the credit union. The charges shall be fixed and determined by the receiver, subject to the approval of the court. [1997 c 397 § 75.]

31.12.691 Liquidation dividends—Approval of court. At any time after the expiration of the date fixed for the presentation of claims, the receiver, subject to the approval of the court, may declare one or more liquidation dividends out of the funds remaining after the payment of expenses. [1997 c 397 § 76.]

31.12.694 Remaining assets—Distribution. When all expenses of the receivership have been paid, as well as all proper claims of share account holders, depositors, and other creditors, and proper provision has been made for unclaimed or unpaid debts and liquidation dividends, and assets of the credit union still remain, the receiver shall wind up the affairs of the credit union and distribute its assets to those entitled to them. Each share account holder and depositor at the credit union is entitled to a proportionate share of the assets remaining. The proportionate allocation shall be based on account balances as of a date determined by the board. For the purposes of liquidation, shares and deposits are equivalent. [1997 c 397 § 77.]

31.12.697 Unclaimed liquidation dividends. Any liquidation dividends to share account holders, depositors, or other creditors of the credit union remaining uncalled for and unpaid in the hands of the receiver for six months after the order of final distribution, must be deposited in a financial institution to each share account holder's, depositor's, or creditor's credit. The funds must be held in trust for the benefit of the persons entitled to the funds and, subject to the supervision of the court, must be paid by the receiver to them upon presentation of satisfactory evidence of their right to the funds. [1997 c 397 § 78.]

31.12.701 Personal property—Receiver's duties. (1) The receiver shall inventory, package, and seal uncalled for and unclaimed personal property left with the credit union, including, but not limited to, property held in safe deposit boxes, and arrange for the packages to be held in safekeeping. The credit union, its directors and officers, and the receiver, shall be relieved of responsibility and liability for the property held in safekeeping. The receiver shall promptly send to each person in whose name the property stood on the books of the credit union, at the person's last known address, a registered letter notifying the person that the property will be held in the person's name for a period of not less than two years.

(2) After the expiration of two years from the date of mailing the notice, the receiver shall promptly send to each person in whose name the property stood on the books of the credit union, at the person's last known address, a registered letter providing notice of sale. The letter must indicate that the receiver will sell the property set out in the notice, at a public auction at a specified time and place, not less than thirty days after the date of mailing the letter. The receiver may sell the property unless the person, prior to the sale, presents satisfactory evidence of the person's right to the property. A notice of the time and place of the sale must be published once within ten days prior to the sale in a newspaper of general circulation in the county where the sale is to be held.

(3) Any property, for which the address of the owner or owners is not known, may be sold at public auction after it has been held by the receiver for two years. A notice of the time and place of the sale must be published once within ten days prior to the sale in a newspaper of general circulation in the county where the sale is to be held.

(4) Whenever the personal property left with the credit union consists either wholly or in part, of documents, letters, or other papers of a private nature, the documents, letters, or

papers may not be sold, but must be retained by the receiver and may be destroyed after a period of five years. [1997 c 397 § 79.]

31.12.704 Proceeds of sale—Deposit or payment by receiver. The proceeds of the sale less any amounts for costs and charges incurred in safekeeping and sale must be deposited by the receiver in a financial institution, in trust for the benefit of the person entitled to the property. The sale proceeds must be paid by the receiver to the person upon presentation of satisfactory evidence of the person's right to the funds. [1997 c 397 § 80.]

31.12.707 Completion of receivership—Merger, purchase, or liquidation—Secretary of state. Upon the completion of a receivership through merger, purchase of assets and assumption of liabilities, or liquidation, the director shall terminate the credit union's authority to conduct business and certify that fact to the secretary of state. Upon certification, the credit union shall cease to exist and the secretary of state shall note that fact upon his or her records. [1997 c 397 § 81.]

31.12.711 Director may terminate receivership—Expenses. If at any time after a receiver is appointed, the director determines that all material deficiencies at the credit union have been corrected, and that the credit union is in a safe and sound condition to resume conducting business, the director may terminate the receivership and permit the credit union to reopen upon such terms and conditions as the director may prescribe. Before being permitted to reopen, the credit union must pay all of the expenses of the receiver. [1997 c 397 § 82.]

31.12.714 Receivership files. The receiver or director, as appropriate, may at any time after the expiration of one year from the order of final distribution, or from the date when the receivership has been completed, destroy any of the remaining files, records, documents, books of account, or other papers of the credit union that appear to be obsolete or unnecessary for future reference as part of the receivership files. [1997 c 397 § 83.]

31.12.717 Pendency of proceedings for review of appointment of receiver—Liabilities of credit union—Availability of relevant data. The pendency of any proceedings for judicial review of the appointment of a receiver may not operate to prevent the payment or acquisition of the share and deposit liabilities of the credit union by the national credit union administration or other insurer or guarantor of the share and deposit liabilities of the credit union. During the pendency of the proceedings, the receiver shall make credit union facilities, books, records, and other relevant credit union data available to the insurer or guarantor as may be necessary or appropriate to enable the insurer or guarantor to pay out or to acquire the insured or guaranteed share and deposit liabilities of the credit union. The national credit union administration and any other insurer or guarantor of the credit union's share and deposit liabilities, together with their directors, officers, agents, and employees, and the director and receiver and their agents and employees, will be free from liability to the credit union, its directors, members, and

creditors, for or on account of any action taken in connection with the receivership. [1997 c 397 § 84.]

31.12.721 Appointment by court of temporary receiver—Notice to director. No receiver may be appointed by any court for any credit union, except that a court otherwise having jurisdiction may in case of imminent necessity appoint a temporary receiver to take possession of and preserve the assets of the credit union. Immediately upon appointment, the clerk of the court shall notify the director in writing of the appointment and the director shall appoint a receiver to take possession of the credit union and the temporary receiver shall upon demand surrender possession of the assets of the credit union to the receiver. The receiver may in due course pay the temporary receiver out of the assets of the credit union, subject to the approval of the court. [1997 c 397 § 85.]

31.12.724 Actions that are void—Felonious conduct—Penalties. (1) Every transfer of a credit union's property or assets, and every assignment by a credit union for the benefit of creditors, made in contemplation of insolvency, or after it has become insolvent, to intentionally prefer one creditor over another, or to intentionally prevent the equal distribution of its property and assets among its creditors, is void.

(2) Every credit union director, officer, or employee making any transfer described in subsection (1) of this section is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) An officer, director, or employee of a credit union who fraudulently receives any share or deposit on behalf of the credit union, knowing that the credit union is insolvent, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 192; 1997 c 397 § 86.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

31.12.726 Conservator or receiver may terminate or adopt executory contracts—Timing—Binding terms—Liability. After the taking of possession of the property and business of a credit union, through conservatorship or receivership, the conservator or receiver may terminate or adopt any executory contract to which the credit union may be a party, including leases of real or personal property. The termination or adoption shall be made within six months after obtaining knowledge of the existence of the contract or lease. Any provision in the contract or lease which provides for damages or cancellation fees upon termination shall not be binding on the conservator, receiver, or credit union. The director, conservator, or receiver, and credit union are not liable for damages. [2010 c 87 § 18.]

31.12.728 Applicability of general receivership law. Except in cases in which a receiver is appointed by a court on a temporary basis under RCW 31.12.721, the provisions of Title 7 RCW generally applicable to receivers and receiverships do not apply to receivers elected or appointed under this chapter. [2004 c 165 § 42.]

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

MISCELLANEOUS

31.12.850 Prohibited acts—Criminal penalties.

(1)(a) It is unlawful for a director, supervisory committee member, officer, employee, or agent of a credit union to knowingly violate or consent to a violation of this chapter.

(b) It is unlawful for any person to knowingly make or disseminate a false report or other misrepresentation about the financial condition of any credit union.

(c) Unless otherwise provided by law, a violation of this subsection is a misdemeanor under chapter 9A.20 RCW.

(2)(a) It is unlawful for a person to perform any of the following acts:

(i) To knowingly subscribe to, make, or cause to be made a false statement or entry in the books of a credit union;

(ii) To knowingly make a false statement or entry in a report required to be made to the director; or

(iii) To knowingly exhibit a false or fictitious paper, instrument, or security to a person authorized to examine a credit union.

(b) A violation of this subsection is a class C felony under chapter 9A.20 RCW. [2010 c 87 § 15; 2003 c 53 § 193; 1997 c 397 § 87; 1994 c 92 § 215; 1984 c 31 § 65. Formerly RCW 31.12.635.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

31.12.853 Prohibited acts—Civil penalties—Rules.

(1) The department is authorized to assess civil fines to the credit union for violation of any of the following:

(a) Any material provision of this chapter or related rules;

(b) Any final or temporary order, including a cease and desist, suspension, removal, or prohibition order;

(c) Any supervisory agreement;

(d) Any condition imposed in writing in connection with the grant of any application or other request; or

(e) Any other written agreement entered into with the director.

(2) At the option of the director, a violation of this section subjects the violator to a fine of up to ten thousand dollars per violation. A continuing violation shall be considered a single violation for this purpose. The fine is payable upon issuance of any order or directive of the director, and may be recovered by the attorney general in a civil action in the name of the department.

(3) The department is authorized to adopt rules for the implementation of this section. [2010 c 87 § 16.]

31.12.860 Taxation of credit unions. Neither a credit union nor its members may be taxed upon its shares and deposits as property. A credit union shall be taxable upon its real property and tangible personal property, and every credit union shall be termed a mutual institution for savings and neither it nor its property may be taxable under any law which exempts savings banks or institutions for savings from taxation. For all purposes of taxation, the assets represented by the regular reserve and other reserves, other than reserves for expenses and losses of a credit union, shall be deemed its only permanent capital, and in computing any tax, whether it be property, income, or excise, appropriate adjustment shall

be made to give effect to the mutual nature of such credit union. [1984 c 31 § 75. Formerly RCW 31.12.735.]

31.12.890 Satellite facilities. See chapter 30A.43 RCW.

31.12.891 Automated teller machines and night depositories security. Chapter 19.174 RCW applies to automated teller machines and night depositories regulated under this title. [1993 c 324 § 11. Formerly RCW 31.12.740.]

Additional notes found at www.leg.wa.gov

31.12.902 Short title. This chapter may be known and cited as the "Washington State Credit Union Act." [1984 c 31 § 76.]

31.12.906 Effective date—1997 c 397. Except for sections 35 and 50 of this act, this act takes effect January 1, 1998. [1997 c 397 § 92.]

31.12.909 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 77.]

31.12.910 Effective date—2010 c 87. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 17, 2010]. [2010 c 87 § 21.]

Chapter 31.13 RCW CORPORATE CREDIT UNIONS

Sections

- 31.13.010 Definition of corporate credit union or corporate.
31.13.020 Authority to organize and operate—Powers and authorities—Name—Federal or Kansas state corporate credit unions.

Business license system exemption: RCW 19.02.800.

31.13.010 Definition of corporate credit union or corporate. As used in this chapter, unless the context in which it is used clearly indicates otherwise, the term "corporate credit union" or "corporate" means a credit union organized under this chapter. [2001 c 83 § 36; 1984 c 31 § 79; 1977 ex.s. c 207 § 5.]

31.13.020 Authority to organize and operate—Powers and authorities—Name—Federal or Kansas state cor-

porate credit unions. (1) Corporate credit unions may be organized and operated under this chapter. A corporate credit union has all the powers and authorities granted in, and is subject to, all of the provisions of chapter 31.12 RCW which are not inconsistent with this chapter. A corporate must use the term "corporate" in its official name. The director may adopt rules for the organization and operation of corporate credit unions.

(2) Notwithstanding any other provision of law, and in addition to all powers and authorities, express or implied, that a corporate credit union has under the laws of this state, a corporate has the powers and authorities that a federal or Kansas state corporate credit union had on July 22, 2001. However, a corporate must still comply with RCW 31.12.408.

(3) Notwithstanding any other provision of law, and in addition to the powers and authorities, express or implied, that a corporate has under subsection (2) of this section, a corporate credit union has the powers and authorities that a federal or Kansas state corporate credit union has subsequent to July 22, 2001, if the director finds that the exercise of the power and authority serves the convenience and advantage of members of credit unions, and maintains the fairness of competition and parity between corporate credit unions. However, a corporate must still comply with RCW 31.12.408.

(4) The restrictions, limitations, and requirements applicable to specific powers or authorities of federal or Kansas state corporate credit unions apply to corporate credit unions exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to the specific exercise of the powers or authorities granted corporate credit unions solely under this section.

(5) As used in this section, "powers and authorities" include, but are not limited to, powers and authorities in corporate governance matters. [2001 c 83 § 37; 1977 ex.s. c 207 § 1.]

Chapter 31.20 RCW

DEVELOPMENT CREDIT CORPORATIONS

Sections

31.20.010	Creation under general corporation laws authorized.
31.20.020	Purposes specified.
31.20.030	Corporate powers.
31.20.040	Minimum capital stock.
31.20.050	Board of directors.
31.20.060	Members power to loan funds to corporation.
31.20.070	Members of corporation enumerated.
31.20.080	Members duty to loan funds to corporation—Maximum limits—Proration of calls.
31.20.090	Withdrawal from membership.
31.20.100	Surplus reserve required.
31.20.110	Funds to be deposited in designated depository.
31.20.120	Money deposits prohibited.
31.20.130	Publication of annual statement of assets and liabilities.
31.20.140	Participation in federal act authorized.

31.20.010 Creation under general corporation laws authorized. Organizations to provide development credit are authorized to be created under the general corporation laws of the state, with all of the powers, privileges and immunities conferred on corporations by such laws. [1959 c 213 § 1.]

(2021 Ed.)

31.20.020 Purposes specified. The purposes of development credit corporations as authorized herein shall be: (1) To promote, aid, and, through the united efforts of the institutions and corporations which shall from time to time become members thereof, develop and advance the industrial and business prosperity and welfare of the state of Washington; (2) To encourage new industries; (3) To stimulate and help to expand all kinds of business ventures which tend to promote the growth of the state; (4) To act whenever and wherever deemed by it advisable in conjunction with other organizations, the objects of which are the promotion of industrial, agricultural or recreational developments within the state; and (5) To furnish for approved and deserving applicants ready and required money for the carrying on and development of every kind of business or industrial undertaking whereby a medium of credit is established not otherwise readily available therefor. [1959 c 213 § 2.]

31.20.030 Corporate powers. In furtherance of the purposes set forth in RCW 31.20.020, and in addition to the powers conferred by the general laws relating to corporations, this corporation shall, subject to the restrictions and limitations set forth in this chapter, have the following powers:

(1) To borrow money on secured or unsecured notes from any bank, trust company, savings bank, mutual savings bank, savings and loan association, building and loan association, credit union, insurance company or union funds which shall be members of this corporation and to pledge bonds, notes and other securities as collateral therefor: PROVIDED, In no case shall the amount so loaned by any member exceed the limit as hereinafter defined;

(2) To lend money upon secured or unsecured applications: PROVIDED, It shall not be the purpose hereof to take from other institutions within the state any such loans or commitments as may be desired by such institutions generally in the ordinary course of their business;

(3) To establish and regulate the terms and conditions of any such loans and charges for interest or service connected therewith;

(4) To purchase, hold, lease and otherwise acquire and to convey such real estate as may, from time to time, be acquired by it in satisfaction of debts or may be acquired by it in the foreclosure of mortgages thereon or upon judgments for debts or in settlements to secure debts. [1959 c 213 § 3.]

31.20.040 Minimum capital stock. No development credit corporation shall be organized with a capital stock of less than twenty-five thousand dollars, which shall be paid into the treasury of the corporation in cash before the corporation shall be authorized to transact any business other than such as relates to its organization. [1959 c 213 § 4.]

31.20.050 Board of directors. All the corporate powers of a development credit corporation shall be exercised by a board of not less than nine directors who shall be residents of this state. The number of directors and their term of office shall be determined by the stockholders at the first meeting held by the incorporators and at each annual meeting thereafter. In the first instance the directors shall be elected by the stockholders to serve until the first annual meeting. At the

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first annual meeting, and at each annual meeting thereafter, one-third of the directors shall be elected by a vote of the stockholders and the remaining two-thirds thereof shall be elected by members of the corporation herein provided for, each member having one vote. The removal of any director from this state shall immediately vacate his or her office. If any vacancy occurs in the board of directors through death, resignation, or otherwise, the remaining directors may elect a person to fill the vacancy until the next annual meeting of the corporation. The directors shall be annually sworn to the proper discharge of their duties and they shall hold office until others are elected or appointed and qualified in their stead. [2011 c 336 § 750; 1959 c 213 § 5.]

31.20.060 Members power to loan funds to corporation. Any member, as set forth in RCW 31.20.070, shall have power and authority to loan any of their funds to any development credit corporation of which they are a member, subject to the restrictions as set forth in RCW 31.20.080, notwithstanding any laws to the contrary pertaining to such member. [1959 c 213 § 6.]

31.20.070 Members of corporation enumerated. The members of a development credit corporation shall consist of such banks, trust companies, savings banks, mutual savings banks, savings and loan associations, building and loan associations, credit unions, insurance companies or union funds as may make accepted applications to this corporation to lend funds to it upon call and up to the limit herein provided. [1959 c 213 § 7.]

31.20.080 Members duty to loan funds to corporation—Maximum limits—Proration of calls. Each member of a development credit corporation shall lend funds to the development credit corporation as and when called upon by it to do so to the extent of the member's commitment, but the total amount on loan by any member at any one time shall not exceed the following limit: (1) For banks, trust companies, or insurance companies, three percent of capital and surplus; (2) For mutual savings banks, savings and loan associations, or credit unions, three percent of guaranty and reserve funds; and (3) Comparable limits for other institutions. All loan limits shall be established at the thousand dollars amount nearest to the amount computed on an actual basis. All calls when made by this corporation shall be prorated among the members on the same proportion that the maximum lending commitment of each bears to the aggregate maximum lending commitment of all members. [1959 c 213 § 8.]

31.20.090 Withdrawal from membership. Upon notice given one year in advance a member of the corporation may withdraw from membership in the corporation at the expiration date of such notice and from said expiration date shall be free from obligations hereunder except as to those accrued prior to said expiration date. [1959 c 213 § 9.]

31.20.100 Surplus reserve required. A development credit corporation shall set apart a surplus of not less than ten percent of its net earnings in each and every year until such surplus, with any unimpaired surplus paid in, shall amount to one-half of the capital stock. The said surplus shall be kept to

secure against losses and contingencies, and whenever the same becomes impaired it shall be reimbursed in the manner provided for its accumulation. [1959 c 213 § 10.]

31.20.110 Funds to be deposited in designated depository. A development credit corporation shall not deposit any of its funds in any institution unless such institution has been designated as a depository by a vote of a majority of the directors, exclusive of the vote of any director who is an officer or director of the depository so designated. [1959 c 213 § 11.]

31.20.120 Money deposits prohibited. A development credit corporation shall not receive money on deposit. [1959 c 213 § 12.]

31.20.130 Publication of annual statement of assets and liabilities. A development credit corporation, on or before February 15th of each year, shall publish in three consecutive issues of a newspaper of general circulation in the area or areas where the corporation is located a statement of assets and liabilities as of December 31st of the preceding year. [1959 c 213 § 13.]

31.20.140 Participation in federal act authorized. Any development credit corporation desiring to qualify and participate in the federal Small Business Investment Act of 1958 and as hereafter amended may do so and to that end may comply with all the laws of the United States and all the rules, regulations and requirements promulgated pursuant thereto. [1959 c 213 § 14.]

Chapter 31.24 RCW

INDUSTRIAL DEVELOPMENT CORPORATIONS

Sections

31.24.005	Findings—Declarations—Intent.
31.24.010	Definitions.
31.24.020	Application—Contents—Articles of incorporation—Fees—Initial capital—Approval.
31.24.023	Filing articles of incorporation—Receipt of certificate of authority.
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31.24.073	Aggregate limit on loans and investments—Single borrower or business.
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31.24.090	Board of directors—Officers and agents—Powers—Election—Meetings.
31.24.100	Minimum capital, surplus, undivided profits, and net earnings.
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31.24.190	Formation of historic business development company for purpose of preservation of historic buildings, areas, or neighborhoods.
31.24.200	Insolvency and liquidation—Chapter 30.44 RCW.
31.24.205	Supervisory direction and conservatorship.
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31.24.220	Confidentiality and disclosure—Examinations.
31.24.225	Business as a limited liability company.
31.24.230	Simultaneous applications—Business development company and nondepository lender of certain loans—Procedure—Fees.
31.24.235	Rule making.
31.24.901	Short title.

Economic development finance authority: RCW 43.163.080.

31.24.005 Findings—Declarations—Intent. The legislature finds, declares, and intends that:

(1) There exists substantial and growing need in Washington state to enhance the availability of financial assistance for small business and to improve the economy of the localities within this state;

(2) The department, which is charged with (a) the regulation of business development corporations, under this chapter, (b) the regulation of financial institutions and other financial entities as defined in this chapter, and (c) nondepository lenders engaged in guaranteed small business and agricultural lending, under chapters 31.40 and 31.35 RCW, is among those state agencies critical to meeting the needs addressed in subsection (1) of this section; and

(3) It is necessary to assist the department in meeting the needs addressed in subsection (1) of this section and to improve its administration and regulation of this chapter and chapters 31.35 and 31.40 RCW. [2006 c 87 § 1.]

31.24.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant" means a person who files with the director an application for organization as, or conversion to doing business as, a business development company under this chapter, or who is making application for a material change that requires approval of the director under this chapter.

(2) "Assessable stock" means any stock or class of stock, or equity interest or class of equity interest, in a business development company that:

(a) Has been authorized pursuant to the articles of incorporation of the business development company as approved by the department;

(b) Has been created pursuant to an authorized plan of assessment;

(c) Has been agreed to by a stockholder pursuant to the stockholder's subscription or similar agreement; and

(d) Has been disclosed as being subject to assessment on the face of the stock certificates or certificates of equity interest.

(3) "Board of directors" means the board of directors of a business development company created under this chapter.

(4) "Borrower" means a person, including a controlling person of such person, who obtains a qualified loan from a business development company.

(5) "Business" means a person, including a controlling person of such person, who obtains a qualified loan or qualified investment, or both, from a business development company.

(6) "Business development company" means a company created for the purpose of engaging in any activity authorized

by this chapter. A "business development company" created under this chapter is either:

(a) A "general business development company," which is a business development company that may engage in any activity authorized by this chapter; or

(b) A "historic business development company," which is a business development company organized to encourage and stimulate the preservation of historic buildings or historic commercial areas or neighborhoods, and may only engage in activities consistent with the purposes of the limited charter as set forth in RCW 31.24.190.

(7) "Business development project" means a project controlled by a business, in which a business development company may make a qualified investment, qualified loan, or both.

(8) "Control," "controlled," or "controls," in relation to a borrower or business, has the same meaning as "control of a bank" has under Federal Reserve Regulation O, 12 C.F.R. Sec. 215.2, as it existed on June 7, 2006, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this chapter.

(9) "Controlling person" means a person, including an executive officer or director as defined in Federal Reserve Regulation O, 12 C.F.R. Sec. 215.2, as it existed on June 7, 2006, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this chapter, who controls a borrower or business.

(10) "Department" means the Washington state department of financial institutions, or its successor.

(11) "Director" means the director of the department of financial institutions, unless used in the context of a member of the board of directors of a business development company created under this chapter.

(12) "Financial institution" means any federally chartered or state-chartered bank or trust company, savings bank or savings and loan association, or credit union.

(13) "Insider transaction" means a transaction between a business development company and a person who is (a) an affiliate of a business development company or (b) an executive officer, director, or principal shareholder, or a related interest of, such a person. As used in this subsection, "affiliate," "executive officer," "director," "principal shareholder," and "related interest" have the same meaning, in relation to a business development company, as such terms have in relation to a member bank pursuant to Federal Reserve Regulation O, 12 C.F.R. Sec. 215.2, as it existed on June 7, 2006, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this chapter.

(14) "Other financial entity" means an insurance company authorized to do business in Washington state, or any other company, limited liability company, partnership, limited partnership, or foundation, other than a financial institution, engaged as a primary activity in the business of lending or investing funds, and which holds a charter or license from an applicable federal or state regulatory authority to engage in such activity.

(15) "Person" means a natural person, partnership, limited partnership, limited liability company, corporation, association, foundation, or other legal or commercial entity.

(16) "Plan of assessment" means a plan for assessment of stockholders, or a class of stockholders, which is part of the

business plan of a business development company that has been approved by the department, and which provides for the periodic, equal assessment of all stockholders, or an affected class of stockholders, according to their interest in the business development company, as provided for in RCW 31.24.066.

(17) "Qualified investment" means any equity investment, or debt investment other than a qualified loan, authorized by this chapter to be made by a business development company to a business:

(a) The principal intent of which:

(i) In the case of a general business development company, is to promote or enhance small business or improvement of the economy of one or more localities within this state, consistent with the general intent and purpose of a business development company, as set forth in RCW 31.24.005, and with its approved business plan; or

(ii) In the case of a historic business development company, is to promote and/or enhance the special purpose and intent of a historic business development company as set forth in RCW 31.24.190, consistent with its approved business plan; and

(b) Which investment, at the time of its origination, has a reasonable likelihood of being used for such purpose.

(18) "Qualified loan" means any loan authorized by this chapter to be made by a business development company to a borrower:

(a) The principal intent of which:

(i) In the case of a general business development company, is to promote or enhance small business or improvement of the economy of one or more localities within this state, consistent with the general intent and purpose of this chapter, and with its approved business plan; or

(ii) In the case of a historic business development company, is to promote or enhance the special purpose and intent of a historic business development company as set forth in RCW 31.24.190, consistent with its approved business plan; and

(b) Which loan, at the time of its origination, has a reasonable likelihood of being used for such purpose.

(19) "Qualified loan participant" means a financial institution or other financial entity, as defined in this section, or any other person engaged in the business of lending, who participates as a funder of a qualified participation loan.

(20) "Qualified participation loan" means a loan to a borrower or business, in relation to a business development project, made, in whole or in part[,] by qualified loan participants, which has been facilitated, arranged, or partially funded by a business development company.

(21) "Stock" means, in relation to a business development company, any stock or equity interest, of whatever class, in a business development company.

(22) "Stockholder" means, in relation to a stockholder of a business development company, any person authorized either by Title 23B RCW to be a shareholder of a corporation or by chapter 25.15 RCW and this chapter to hold an equity interest in a limited liability company, and may include, without limitation, a financial institution or other financial entity. [2006 c 87 § 2; 1963 c 162 § 1.]

31.24.020 Application—Contents—Articles of incorporation—Fees—Initial capital—Approval. (1) Five or more persons, a majority of whom are residents of this state and three of which are federally insured depository institutions, who desire to charter a business development company under this chapter, may incorporate as a business development company by filing with the director an application for a business development company charter, which application contains the following:

(a) A cover letter requesting a charter as a business development company under authority of this chapter, and specifying the purpose of the requested charter;

(b) A business plan satisfactory to the director, including a plan of assessment in the event that applicant seeks to assess stockholders, or a class of stockholders, as provided for in RCW 31.24.066;

(c) Proposed articles of incorporation, in form and substance consistent with the requirements of subsection (4) of this section;

(d) Proposed bylaws, in form and substance consistent with the requirements of this chapter;

(e) A filing fee and application review fee as established by the director consistent with RCW 31.24.025; and

(f) All other relevant information as is necessary to satisfy the director that such proposed business development company has a reasonable likelihood of (i) fulfilling the purposes of this chapter and (ii) operating in a safe and sound manner.

(2) In addition to all other requirements of an application, the director shall not grant final approval of an application for organization as a business development company under this chapter, and a business development company shall not commence business, until the applicant certifies to the satisfaction of the director, that a minimum amount of initial capital has been subscribed for, which minimum amount of capital is subject to the determination of the director, who may consider (a) the intended purpose of initial capital and (b) the suitability and sufficiency of the amount of initial capital in relation to the applicant's proposed business plan.

(3) The articles of incorporation must be in writing, signed by all the incorporators and their representatives and acknowledged before an officer authorized to take acknowledgments.

(4) The articles of incorporation shall contain:

(a) The name of the business development company, which must include the word "Development";

(b) A recital that the business development company is organized under this chapter;

(c) The location of the principal office of the business development company, but the company may have offices in other places within the state as may be fixed by the board of directors;

(d) The purposes for which the business development company is founded, which, except for a historic business development company as authorized by RCW 31.24.190, are:

(i) To promote, stimulate, develop, and advance the business prosperity and economic welfare of Washington and its citizens;

(ii) To encourage and assist through financing, investments, or other business transactions, in the location of new

business and industry in this state and to rehabilitate and assist existing business and industry;

(iii) To stimulate and assist in the expansion of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of citizens of this state;

(iv) To cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and/or recreational developments in this state; and

(v) To provide financing for the promotion, development, and conduct of business activity in this state;

(e) The names and mailing addresses of the members of the first board of directors, who, unless otherwise provided by the articles of incorporation or the bylaws, shall hold office for the first year of existence of the business development company or until their successors are elected and have qualified;

(f) Any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the business development company;

(g) Any provision creating, dividing, limiting, and regulating the powers of the business development company, the directors, stockholders or any class of the stockholders, including a designation of the officers, and provisions governing the issuance of stock certificates to replace lost or destroyed certificates;

(h) The amount of authorized capital stock and the number of shares into which it is divided, the par value of each share, and the amount of capital with which it will commence business;

(i) A statement indicating whether capital stock or any class of capital stock shall be assessable stock as part of a plan of assessment;

(j) The names and mailing addresses of the subscribers of stock and the number of shares subscribed by each;

(k) Any other provision consistent with the laws of this state for the regulation of the affairs of the business development company, and Title 23B RCW; and

(l) The signatures of each of the incorporators, who must be the same persons making application for a business development company charter as identified in subsection (1) of this section.

(5) The director has ninety days from submission of a completed application to approve it and issue a certificate of authority. If the director finds that the application is insufficient, the director may either disapprove the application or respond by specifying in writing what changes and modifications, consistent with this chapter, will be necessary to approve such application. [2006 c 87 § 3; 1974 ex.s. c 16 § 1; 1963 c 162 § 2.]

31.24.023 Filing articles of incorporation—Receipt of certificate of authority. (1) The director shall present the articles of incorporation, after approval by the director, to the secretary of state for filing.

(2) An applicant is not authorized to commence and maintain business as a business development company under this chapter until having received a certificate of authority

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from the department to conduct business as a business development company. [2006 c 87 § 4.]

31.24.025 Fees—Director's discretion. The director may, consistent with the requirements for banks under *Title 30 RCW, collect from an applicant or business development company, as applicable, application fees, application review fees, periodic examination fees, and similar fees and charges, as may be reasonable for the safe and sound regulation and promotion of business development companies under this chapter. [2006 c 87 § 5.]

*Reviser's note: Title 30 RCW was recodified and/or repealed pursuant to 2014 c 37, effective January 5, 2015.

31.24.030 Corporate powers. In furtherance of its purposes and in addition to the powers now or hereafter conferred on business corporations by Title 23B RCW and upon limited liability companies by chapter 25.15 RCW, as applicable, a business development company has, subject to the restrictions and limitations in this section, the following powers:

(1) To assess stockholders, or a class of stockholders, of the business development company, if authorized by the articles of incorporation and approved by the department pursuant to a plan of assessment as provided for in RCW 31.24.066;

(2) To make qualified loans to borrowers in relation to business development projects;

(3) To make qualified investments in businesses in relation to business development projects;

(4) To facilitate and arrange qualified participation loans by qualified loan participants to borrowers in relation to business development projects;

(5) To participate in the partial funding of qualified participation loans;

(6) To elect, appoint, and employ officers, agents, and employees;

(7) To make contracts and incur liabilities for any of the purposes of the business development company. However, a business development company shall not incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, company, association, or trust, or in any other manner;

(8) To the extent permitted by other applicable law, to borrow money from the federal small business administration and any other similar federal or state agency, for any of the purposes of a business development company;

(9) To borrow money from a financial institution or other financial entity;

(10) To issue bonds, debentures, notes, or other evidence of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature or any part or interest therein, without securing stockholder approval;

(11) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the business development

company in the satisfaction of debts or enforcement of obligations;

(12) To acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, limited liability companies, partnerships, limited partnerships, associations, or trusts, and to assume, undertake, or pay the obligations, debts, and liabilities of any such person, firm, corporation, limited liability company, partnership, limited partnership, association, or trust;

(13) To acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments;

(14) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in, or indebtedness of, any person, firm, limited liability company, partnership, limited partnership, association, or trust, and while the owner or holder thereof to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon;

(15) To mortgage, pledge, or otherwise encumber any property, right or things of value, acquired pursuant to the powers contained in subsections (11), (12), and (14) of this section, as security for the payment of any part of the purchase price thereof;

(16) To cooperate with and avail itself of the facilities and assistance programs of the United States department of commerce, the United States department of the treasury, the United States department of housing and urban development, the *department of community, trade, and economic development, and any other similar state or federal governmental agencies; and to cooperate with and assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this state or of any part thereof; and

(17) To do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter. [2006 c 87 § 6; 1991 c 72 § 49; 1985 c 466 § 42; 1983 c 3 § 51; 1963 c 162 § 3.]

*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Additional notes found at www.leg.wa.gov

31.24.066 Plan of assessment—Purpose—Requirements—Approval. (1) As part of a business plan approved by the department, an applicant or business development company may seek to maintain capital for purposes of making qualified investments and qualified loans by periodically assessing its stockholders, or a class of stockholders, according to a plan of assessment and as agreed upon by affected stockholders by subscription or similar agreement.

(2) A plan of assessment may provide for:

(a) Stockholders, or a class of stockholders, making, when called upon, additional paid-in capital in exchange for additional equity; and/or

(b) Stockholders, or a class of stockholders, making, when called upon, loans or other debt financing to the business development company in exchange for an agreement of repayment.

(3) A plan of assessment shall provide for equal treatment by the board of directors of all stockholders, or members of a class of stockholders, subject to assessment.

(4) In the case of the approval of a plan of assessment, or the examination of the administration of an ongoing plan of assessment, in which assessable stock is held by a financial institution that is also regulated by the department, the department may condition its approval of the implementation or continued administration of a plan of assessment as to the affected financial institution on whether the safety and soundness of such financial institution is or may become unimpaired, or on whether an assessment of such financial institution has not or will not result, in a material adverse affect on the classification of such financial institution, or its lending or investment portfolio. The authority of the department pursuant to this subsection shall be in addition to all other authority of the department under this chapter or any other applicable law, and notwithstanding any other law to the contrary. [2006 c 87 § 7.]

31.24.070 Powers of stockholders—Voting rights—Proxy voting—Plan of assessment—Dividends—Rules.

(1) The stockholders of the business development company have the following powers:

(a) To determine the number of and elect directors as provided in RCW 31.24.090;

(b) To make, amend, and repeal bylaws;

(c) To amend the articles of incorporation as provided in RCW 31.24.080;

(d) To dissolve the company as provided in RCW 31.24.150;

(e) To do all things necessary or desirable to secure aid, assistance, loans, and other financing from any financial institutions, and from any agency established under federal laws;

(f) To exercise such other powers consistent with this chapter as may be conferred on the stockholders by the bylaws.

(2) As to all matters requiring action by the stockholders of the business development company, the stockholders shall vote, and, except as otherwise provided, such matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled.

(3) Each stockholder shall have one vote, in person or by proxy, for each share of capital stock held.

(4) The capital stock of stockholders of a business development company is nonassessable, unless authorized by the department pursuant to a plan of assessment which has been approved by the director as provided for in RCW 31.24.066.

(5) Except as permitted by a plan of assessment providing for a class of assessable stock pursuant to RCW 31.24.066 or as may otherwise be established by rule, all stock is a single class of voting common stock.

(6) The director may, subject to examination authority, determine that a policy of declaring dividends for stockholders by a particular business development company constitutes an unsafe and unsound practice as to such business development company. If the practice is determined to be unsafe and unsound, the director may instruct such a business development company to cease and desist the declaration and grant of such dividends.

(7) The department may, at the option of the director, adopt rules, consistent with principles of safety and soundness, that, while not prohibiting dividends to stockholders in general, may limit the amount of such dividends and the time and manner of declaring them. [2006 c 87 § 8; 1963 c 162 § 7.]

31.24.073 Aggregate limit on loans and investments—Single borrower or business. Unless part of an initial or amended business plan approved by the director, or as may otherwise be provided by rule adopted pursuant to RCW 31.24.120(3), the aggregate limit of qualified loans, qualified investment, and partial funding of qualified participation loans by a business development company to a single borrower or business, in relation to a business development project, shall not exceed twenty-five percent of the combined capital, surplus, and undivided profits of the business development company. [2006 c 87 § 9.]

31.24.075 Insider transactions. (1) A business development company may not be a party to, nor engage in, an insider transaction, unless such an insider transaction is approved or ratified by its board of directors, exclusive of the vote of any interested director.

(2) Any insider transaction is subject to the examination and enforcement authority of the department under this chapter. [2006 c 87 § 10.]

31.24.080 Amendment of articles of incorporation—Director's approval—Filing. (1) The articles of incorporation of a business development company may be amended by the affirmative vote of two-thirds of the votes to which the stockholders are entitled, subject to the written approval of the director.

(2) Within thirty days after an amendment of the articles of incorporation has been adopted and approved by the director, the articles of amendment shall be filed in the office of the secretary of state by the director. An amendment shall not take effect until it has been so filed. [2006 c 87 § 11; 1994 c 92 § 235; 1963 c 162 § 8.]

31.24.090 Board of directors—Officers and agents—Powers—Election—Meetings. (1) The business and affairs of a business development company shall be managed and conducted by a board of directors, a president, a secretary, a treasurer, and such other officers and such agents as the company by its bylaws shall authorize. A single authorized individual may jointly hold the offices of secretary and treasurer. The president and the treasurer may not be the same person.

(2) The board of directors shall consist of such number, not less than five nor more than nine, as shall be determined in the first instance by the incorporators and thereafter annu-

ally by the stockholders of the business development company. The board of directors:

(a) May exercise all the powers of the business development company, except those conferred upon the stockholders by law or by the bylaws of the business development company; and

(b) Shall choose and appoint all the agents and officers of the business development company and fill all vacancies except vacancies in the office of director which shall be filled as provided in subsections (3) and (4) of this section.

(3) The board of directors shall be elected in the first instance by the incorporators and thereafter at the annual meeting, the day and month of which shall be established by the bylaws, or, if no annual meeting shall be held in the year of incorporation, then within ninety days after the approval of the articles of incorporation at a special meeting as provided in subsection (4) of this section.

(4) At each annual meeting, or at each special meeting held as provided in subsection (3) of this section, the stockholders of a business development company shall elect all of the board of directors. The directors shall hold office until the next annual meeting of the business development company, or special meeting. The authority of the directors commences immediately after the election and continues until their successors are elected and qualified, unless sooner removed in accordance with the provisions of the bylaws. Any vacancy in the office of a director shall be filled by the remaining directors at a regular meeting or special meeting called for that purpose. The director appointed to fill such vacancy shall serve until the next annual meeting, resignation, or removal according to law.

(5) Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the gross negligence or willful misconduct of such directors and officers.

(6) The board of directors shall conduct regular meetings at least every quarter and may hold special meetings as called for pursuant to the bylaws.

(7) Unless otherwise restricted by the articles of incorporation or bylaws, members of the board of directors of a business development company or any committee designated by the board of directors may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment, in which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence, in person, at a meeting. [2006 c 87 § 12; 1974 ex.s. c 16 § 3; 1963 c 162 § 9.]

31.24.100 Minimum capital, surplus, undivided profits, and net earnings. (1) A business development company shall maintain an amount of minimum capital, surplus, and undivided profits that, based upon the determination of the director, shall be deemed safe and sound for each business development company. However, the minimum ratio of paid-in capital to total assets, inclusive of all qualified loans and qualified investments, shall be and remain no less than eight percent.

(2) Subject to subsection (1) of this section, minimum capital, surplus, undivided profits, and net earnings shall be determined by the board of directors, subject to the exercise

of prudent business judgment. [2006 c 87 § 13; 1963 c 162 § 10.]

31.24.110 No receipt of money on deposit. A business development company shall not receive money on deposit. [2006 c 87 § 14; 1963 c 162 § 11.]

31.24.120 Examinations by director of financial institutions—Reports—Authority of director. (1) The director shall exercise the same power and authority over business development companies organized under this chapter as exercised over banks and trust companies under *Title 30 RCW, to the extent *Title 30 RCW does not conflict with this chapter.

(2) A business development company shall be examined at least once every twenty-four months by the director and shall make reports of its condition not less than annually to the director, and more frequently in the discretion of the director. The business development company shall pay the actual cost of the examinations.

(3) To assure the safety and soundness of business development companies and to fulfill the purposes of this chapter, the director may, by examination, rule, and interpretation, establish and enforce safety and soundness and examination standards, for all operations and activities of and related to business development companies. [2006 c 87 § 15; 1994 c 92 § 236; 1963 c 162 § 12.]

*Reviser's note: Title 30 RCW was recodified and/or repealed pursuant to 2014 c 37, effective January 5, 2015.

31.24.130 First meeting—Notice—Duties of incorporators. (1) The first meeting of a business development company shall be called by a notice signed by three or more of the incorporators, stating the time, place, and purpose of the meeting, a copy of which notice shall be mailed, or delivered, to each incorporator at least five days before the day appointed for the meeting. The first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. A copy of the notice or unanimous agreement of the incorporators shall be recorded in the minutes of the first meeting.

(2) At the first meeting, the incorporators shall, consistent with Title 23B RCW:

- (a) Choose a temporary recording secretary;
- (b) Adopt bylaws;
- (c) Elect directors; and

(d) Engage in other business within the powers of the business development company as the incorporators present may see fit.

(3) Upon being sworn in at the first meeting, the temporary recording secretary shall make and attest a record of the proceedings.

(4) At least five of the incorporators shall constitute a quorum for the transaction of business at a first meeting. [2006 c 87 § 16; 1963 c 162 § 13.]

31.24.140 Duration of business development company. Unless otherwise provided in the articles of incorporation, the period of duration of a business development company shall be perpetual, subject, however, to the right of the stockholders to dissolve the business development company

as provided in RCW 31.24.150. [2006 c 87 § 17; 1963 c 162 § 14.]

31.24.150 Dissolution—Method—Distribution of assets. A business development company, upon the affirmative vote of two-thirds of the votes of the stockholders entitled to vote their shares, shall dissolve the business development company as provided by Title 23B RCW, to the extent that Title 23B RCW is not in conflict with this chapter. Upon dissolution of the business development company, none of the business development company's assets shall be distributed to the stockholders until all sums due the creditors thereof have been paid in full. [2006 c 87 § 18; 1991 c 72 § 50; 1983 c 3 § 52; 1963 c 162 § 15.]

31.24.160 Credit of state not pledged. Under no circumstances shall the credit of the state of Washington be pledged to any corporation organized under the provisions of this chapter. [1963 c 162 § 16.]

31.24.170 Business development companies designated state development companies. Any business development company organized under this chapter shall be a state development company, as authorized under Title V of the small business investment act of 1958, Public Law 85-699, 15 U.S.C. Sec. 695, as amended, or any other similar federal legislation. [2006 c 87 § 19; 1963 c 162 § 17.]

31.24.190 Formation of historic business development company for purpose of preservation of historic buildings, areas, or neighborhoods. (1) In addition to the purposes specified in RCW 31.24.020 a historic business development company may be formed for one or more of the following purposes:

(a) To encourage and stimulate the preservation of historic buildings or historic commercial areas or neighborhoods by returning them to economically productive uses which are compatible with or enhance the historic character of such buildings, commercial areas, or neighborhoods;

(b) To stimulate and assist in the development of business or other activities which have an impact upon the preservation of historic buildings, commercial areas, or neighborhoods;

(c) To cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of historical preservation activities; and

(d) To provide financing through loans, investments of other business transactions for the promotion, development, and conduct of all kinds of business activity that encourages or relates to historic preservation.

(2) A historic business development company shall not engage in the broad economic and business promotion activities permitted by a general business development company.

(3) A general business development company may, in addition to all other activities permitted by this chapter, engage in those activities specifically permitted of a historic business development company organized under subsection (1) of this section. [2006 c 87 § 20; 1973 1st ex.s. c 90 § 2.]

31.24.200 Insolvency and liquidation—Chapter 30.44 RCW. *Chapter 30.44 RCW applies to the insolvency

and liquidation of a business development company organized under this chapter. [2006 c 87 § 21.]

***Reviser's note:** Chapter 30.44 RCW was recodified as chapter 30A.44 RCW pursuant to 2014 c 37 § 4, effective January 5, 2015.

31.24.205 Supervisory direction and conservatorship. The director has the same power and authority to exercise supervisory direction and conservatorship of, and to issue cease and desist orders upon, a business development company organized under this chapter, as the director has in regard to a bank under *Title 30 RCW. [2006 c 87 § 22.]

***Reviser's note:** Title 30 RCW was recodified and/or repealed pursuant to 2014 c 37, effective January 5, 2015.

31.24.210 Mergers or consolidations—Application—Approval. (1) Subject to written approval of the director, one or more general business development companies may merge into or consolidate with each other consistent with *chapter 30.49 RCW.

(2) Upon ninety days advance application to and written approval of the director, a historic business development company may convert its charter to that of a general business development company. An application for conversion shall contain a cover letter requesting conversion, the proposed articles of amendments and bylaws amendments, a modified business plan, and other relevant information in form and substance similar to the requirements of a de novo application for a general business development company as provided in RCW 31.24.020. In making a determination of whether to approve or deny such a conversion, the director shall consider:

(a) The historic performance and safety and soundness of the historic business development company;

(b) Whether the conversion to a general business development company will have a likelihood of continuing to fulfill the purposes of this chapter;

(c) Whether the applicant will have a likelihood of remaining safe and sound as a general business development company and pursuant to its proposed modified business plan; and

(d) Whether the proposed conversion would serve, or otherwise not detract from, the needs and convenience of the community served by the business development company. [2006 c 87 § 23.]

***Reviser's note:** Chapter 30.49 RCW was recodified as chapter 30A.49 RCW pursuant to 2014 c 37 § 4, effective January 5, 2015.

31.24.215 Conversion of development credit corporation—Application—Approval—Filing of articles—Certificate of authority. (1) Notwithstanding any other provision of this chapter, a development credit corporation created under chapter 31.20 RCW, or any other company incorporated under Title 23B RCW, may convert to a business development company by filing an application with the department and receiving written approval of the director within ninety days of the date the application is received.

(2) In addition to all other requirements of a business development company pursuant to this chapter, the director shall not approve an application for conversion of a development credit corporation unless:

(a) A minimum of three stockholders of such corporation are financial institutions;

(b) The majority of outstanding shares of common stock of such corporation are held by financial institutions;

(c) The articles of incorporation of such a corporation are amended to conform to the requirements of RCW 31.24.020;

(d) The bylaws of such a corporation are amended to conform to the requirements of this chapter;

(e) The business plan of the corporation is consistent with the requirements of this chapter and has been approved by the director; and

(f) The corporation otherwise satisfies the director that all other requirements of a business development company under this chapter have been met. However, such a corporation is not required to have had a minimum of five incorporators at the time it originally was incorporated with the secretary of state, as provided for in RCW 31.24.020(1).

(3) Upon approval by the director of the corporation's application for conversion, the amended articles of incorporation, as approved by the director, shall be filed by the director with the secretary of state in the same manner provided for the filing of initial articles of incorporation under RCW 31.24.023. Such corporation shall not commence operation as a business development company until the director has issued such corporation a certificate of authority to conduct business as a business development company. [2006 c 87 § 24.]

31.24.220 Confidentiality and disclosure—Examinations. The existing privileges, immunities, and requirements of confidentiality and disclosure with respect to examination records and information obtained by the director in conducting examinations, which are applicable to banks, as set forth in *RCW 30.04.075, apply to examination records and information obtained by the director in conducting examinations of business development companies organized under this chapter. [2006 c 87 § 25.]

***Reviser's note:** RCW 30.04.075 was recodified as RCW 30A.04.075 pursuant to 2014 c 37 § 4, effective January 5, 2015.

31.24.225 Business as a limited liability company. Notwithstanding any other provision of this chapter, a business development company organized under this chapter may be chartered as a limited liability company, or may convert to doing business as a limited liability company, to the same extent and subject to the same terms and conditions as permitted for a bank organized under *Title 30 RCW, including, without limitation, requirements related to director approval, operational matters, corporate governance, and restrictions on complete dissociation. However:

(1) The rights of stockholders, as defined in this chapter, supersede the provisions of *Title 30 RCW to the contrary; and

(2) The limited liability company agreement, or other governing charter document of the limited liability company, must contain the same or substantially similar recitals as required in RCW 31.24.020 with respect to business purpose, organizational authority, board of directors, management, and limitations on liability of directors and officers. [2006 c 87 § 26.]

*Reviser's note: Title 30 RCW was recodified and/or repealed pursuant to 2014 c 37, effective January 5, 2015.

31.24.230 Simultaneous applications—Business development company and nondepository lender of certain loans—Procedure—Fees. (1) An applicant may apply simultaneously for both a business development company charter, under this chapter, and for a license as a nondepository lender of federally guaranteed small business loans, under chapter 31.40 RCW.

(2) An applicant may apply simultaneously for both a business development company charter, under this chapter, and for a license as a nondepository lender of guaranteed agricultural loans, under chapter 31.35 RCW.

(3) Notwithstanding any provisions of this chapter or chapter 31.35 or 31.40 RCW, applications presented to the director as set forth in subsections (1) and (2) of this section shall be considered and evaluated by the director as one application, and an applicant:

(a) If granted a business development company charter based on a joint application as provided in subsections (1) and (2) of this section, shall pay fees and charges only as required by this chapter and be subject to joint and simultaneous application review and periodic examination; and

(b) If denied a business development company charter when having made a joint application as provided in subsections (1) and (2) of this section, shall pay fees and charges only as required by this chapter.

(4) An existing business development company organized under this chapter may apply for either a license, under chapter 31.35 RCW, or a license, under chapter 31.40 RCW, or both; and, if granted, the business development company, as a dual licensee, shall then pay fees and charges only as required by this chapter and be subject to joint and simultaneous application review and periodic examination. [2006 c 87 § 27.]

31.24.235 Rule making. The director has broad administrative authority and discretion to adopt rules to carry out the purposes of this chapter. [2006 c 87 § 31.]

31.24.901 Short title. This chapter shall be known and may be cited as the "business development company act." [2006 c 87 § 32.]

Chapter 31.35 RCW

AGRICULTURAL LENDERS—LOAN GUARANTY PROGRAM

Sections

31.35.010	Findings—Intent.
31.35.020	Definitions.
31.35.030	Administration—Rules—Duties of director.
31.35.040	Participation by agricultural lender—Powers and privileges.
31.35.050	Costs of supervision—Fees.
31.35.060	Responsibility of agricultural lender—Recordkeeping—Loan loss reserve.
31.35.070	Examination of agricultural lender.
31.35.080	Enforcement—Responsibility of director—Penalty.
31.35.090	Enforcement—Court order.
31.35.100	Notice—Investments not insured.
31.35.105	Application of RCW 31.24.230.
31.35.900	Severability—Administrative review—1990 c 134.

Department of financial institutions: Chapter 43.320 RCW.

31.35.010 Findings—Intent. The legislature finds and declares that nondepository agricultural lenders can enhance their access to working capital for the purpose of financing agricultural borrowers by using the United States farmers home administration loan guaranty program. The farmers home administration loan guaranty program provides financing to agricultural borrowers needing working capital and longer term financing for the purchase of real estate, agricultural production expenses, debt refinancing, equipment, and the purchase of other fixed assets. Loans can be made to agricultural borrowers by nondepository lenders and guaranteed by the farmers home administration only if the state provides an ongoing opportunity for examination of such entities to confirm good lending practices and solvency.

It is the intent of the legislature to empower the director of financial institutions to examine nondepository agricultural lenders for the purpose of allowing such lenders to qualify for participation in the farmers home administration loan guaranty program. [1994 c 92 § 251; 1990 c 134 § 1.]

31.35.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agricultural lender" means a Washington corporation incorporated under Title 23B or 24 RCW and qualified as such under this chapter and the jurisdiction of the federal government agency sponsoring the loan guaranty program.

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

(3) "Loan guaranty program" means the farmers home administration loan guaranty program, or any other government program for which the agricultural lender is eligible and which has as its function the provision, facilitation, or financing of agricultural business operations. [1994 c 92 § 252; 1990 c 134 § 2.]

31.35.030 Administration—Rules—Duties of director. (1) The director shall administer this chapter. The director may issue orders and adopt rules that, in the opinion of the director, are necessary to execute, enforce, and effectuate the purposes of this chapter. Rules to enforce the provisions of this chapter shall be adopted under the administrative procedure act, chapter 34.05 RCW.

(2) An application filed with the director under this chapter shall be in such form and contain such information as required by the director by rule and be consistent with the requirements of the loan guaranty program.

(3) After the director is satisfied that the applicant has satisfied all the conditions necessary for approval, the director shall issue a license to the applicant authorizing it to be an agricultural lender under this chapter.

(4) Any change of control of an agricultural lender shall be subject to the approval of the director. Such approval shall be subject to the same criteria as the criteria for approval of the original license. For purposes of this subsection, "change of control" means directly or indirectly, alone or in concert with others, to own, control, or hold the power to vote ten percent or more of the outstanding voting stock of an agricultural lender or the power to elect or control the election of a majority of the board of directors of an agricultural lender.

(5) The director may deny, suspend, or revoke a license if the agricultural lender violates any provision of this chapter or any rules promulgated pursuant to this chapter. [1994 c 92 § 253; 1990 c 134 § 3.]

31.35.040 Participation by agricultural lender—Powers and privileges. (1) An agricultural lender may participate in a loan guaranty program. If an agricultural lender participates in a loan guaranty program, the agricultural lender shall comply with the requirements of that program.

(2) An agricultural lender may be incorporated under either the Washington business corporation act, Title 23B RCW, or the Washington nonprofit corporation act, Title 24 RCW. In addition to the powers and privileges provided to an agricultural lender by this chapter, an agricultural lender has all the powers and privileges conferred by its incorporating statute that are not inconsistent with or limited by this chapter. [1990 c 134 § 4.]

31.35.050 Costs of supervision—Fees. (1) The director is authorized to charge a fee for the estimated direct and indirect costs for examination and supervision by the director of an agricultural lender or a subsidiary of an agricultural lender. Excess examiner time shall be billed at a reasonable rate established by rule.

(2) All such fees shall be deposited in the financial services regulation fund and administered consistent with the provisions of RCW 43.320.110. [2001 c 177 § 7; 1994 c 92 § 254; 1990 c 134 § 5.]

Additional notes found at www.leg.wa.gov

31.35.060 Responsibility of agricultural lender—Recordkeeping—Loan loss reserve. (1) An agricultural lender shall keep books, accounts, and other records in such form and manner as required by the director. These records shall be kept at such place and shall be preserved for such length of time as specified by the director by rule.

(2) Not more than ninety days after the close of each calendar year, or within a period specified by the director, an agricultural lender shall file with the director a report containing the following:

(a) Financial statements, including the balance sheet, the statement of income or loss, the statement of changes in capital accounts, and the statement of changes in financial position; and

(b) Other information that the director may require.

(3) Each agricultural lender shall provide for a loan loss reserve sufficient to cover projected loan losses that are not guaranteed by the United States government or any agency thereof. [1994 c 92 § 255; 1990 c 134 § 6.]

31.35.070 Examination of agricultural lender. (1) The director shall visit each agricultural lender at least every twenty-four months for the purpose of assuring that the agricultural lender remains in compliance with and qualified for the loan guaranty program.

(a) The director may accept timely audited financial statements and other timely reports the director determines to be relevant and accurate as part of a full and complete examination of the agricultural lender. The director shall make an

independent review of loans guaranteed by the loan guaranty program.

(b) The agricultural lender shall be exempt from examination under this subsection if it terminates its activities under the loan guaranty program and no loans guaranteed by the loan guaranty program remain on the books. This exemption becomes effective upon notification to the director. The director shall confirm termination of activities under the loan guaranty program with the appropriate federal agency.

(c) All examination reports and all information obtained by the director and the director's staff in conducting examinations of an agricultural lender are confidential to the same extent bank examinations are confidential under *RCW 30.04.075.

(d) All examination reports may be shared with other state or federal agencies consistent with **chapter 30.04 RCW.

(2) A director, officer, or employee of an agricultural lender or of a subsidiary of an agricultural lender being examined by the director or a person having custody of any of the books, accounts, or records of the agricultural lender or of the subsidiary shall facilitate the examination so far as it is in his or her power to do so.

(3) If in the opinion of the director it is necessary in the examination of an agricultural lender or of a subsidiary of an agricultural lender, the director may retain any certified public accountant, attorney, appraiser, or other person to assist the director. The agricultural lender being examined shall pay the fees of a person retained by the director under this subsection. [1994 c 92 § 256; 1990 c 134 § 7.]

Reviser's note: *(1) RCW 30.04.075 was recodified as RCW 30A.04.075 pursuant to 2014 c 37 § 4, effective January 5, 2015.

** (2) Chapter 30.04 RCW was recodified as chapter 30A.04 RCW pursuant to 2014 c 37 § 4, effective January 5, 2015.

31.35.080 Enforcement—Responsibility of director—Penalty. (1) The director shall adopt rules to enforce the intent and purposes of this chapter. Such rules shall include, but not be limited to, the following:

(a) Disclosure of conflicts of interest;

(b) Prohibition of false statements made to the director on any form required by the director or during any examination; or

(c) Prevention of fraud and undue influence within an agricultural lender.

(2) A violation of any provision of this chapter or any rule of the director adopted under this chapter by an agent, employee, officer, or director of the agricultural lender shall be punishable by a fine, established by the director, not to exceed one hundred dollars for each offense. Each day's continuance of the violation shall be a separate and distinct offense. All fines shall be credited to the financial services regulation fund.

(3) The director may issue and serve upon an agricultural lender a notice of charges if, in the opinion of the director, the agricultural lender is violating or has violated the law, rule, or any condition imposed in writing by the director or any written agreement made by the director.

(a) The notice shall contain a statement of the facts constituting the alleged violation or practice and shall fix a time and place at which a hearing will be held to determine

whether an order to cease and desist should issue against the agricultural lender. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice unless a later date is set by the director at the request of the agricultural lender.

Unless the agricultural lender appears at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of consent or if, upon the record made at the hearing, the director finds that any violation or practice specified in the notice of charges has been established, the director may issue and serve upon the agricultural lender an order to cease and desist from the violation or practice. The order may require the agricultural lender and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the agricultural lender to take affirmative action to correct the conditions resulting from the violation or practice.

(b) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the agricultural lender concerned, except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided in the order unless it is stayed, modified, terminated, or set aside by action of the director or a reviewing court. [2001 c 177 § 8; 1994 c 92 § 257; 1990 c 134 § 8.]

Additional notes found at www.leg.wa.gov

31.35.090 Enforcement—Court order. If, in the opinion of the director, an agricultural lender violates or there is reasonable cause to believe that an agricultural lender is about to violate any provision of this chapter or any rule adopted under this chapter, the director may bring an action in the appropriate court to enjoin the violation or to enforce compliance. Upon a proper showing, a restraining order, or preliminary or permanent injunction, shall be granted, and a receiver or a conservator may be appointed for the agricultural lender or the agricultural lender's assets. [1994 c 92 § 258; 1990 c 134 § 9.]

31.35.100 Notice—Investments not insured. All agricultural lenders shall notify their members at the time of membership and annually thereafter that their investment in the agricultural lender, although regulated by the director, is not insured, guaranteed, or protected by any federal or state agency. [1994 c 92 § 259; 1990 c 134 § 10.]

31.35.105 Application of RCW 31.24.230. RCW 31.24.230 (2) through (4) supersede any contrary provision of this chapter. [2006 c 87 § 28.]

31.35.900 Severability—Administrative review—1990 c 134. If any provision of this act or its application to any person or circumstance is held invalid or, in the written opinion of the farmers home administration, is contrary to the intent and purposes of the loan guaranty program, the director shall not enforce such provision, but the remainder of the act or the application of the provision to other persons or circumstances shall not be affected. [1994 c 92 § 260; 1990 c 134 § 11.]

Chapter 31.40 RCW FEDERALLY GUARANTEED SMALL BUSINESS LOANS

Sections

31.40.010	Intent.
31.40.020	Definitions.
31.40.030	Director—Powers and duties.
31.40.040	Licensee—Powers and duties.
31.40.050	License approval.
31.40.060	Prohibited loans—Exception.
31.40.070	Fees.
31.40.080	Records—Reports—Loan loss reserve.
31.40.090	Examination of licensees.
31.40.100	Application denial.
31.40.110	Rules—Penalties.
31.40.120	Injunction.
31.40.130	Penalty—License impairment.
31.40.135	Application of RCW 31.24.230.
31.40.900	Severability—1989 c 212.

31.40.010 Intent. The legislature finds and declares that small and moderate-size companies can enhance their access to working capital and to capital for acquiring and equipping commercial and industrial facilities by using the United States small business administration national small business loan program known as the 7(a) loan guaranty program. The 7(a) loan guaranty program provides financing to small firms needing working capital and longer term financing for equipment and other fixed assets. Such loans can be made to small businesses by nondepository lenders and guaranteed by the small business administration only if the state provides for the ongoing regulation and examination of such entities.

It is the intent of the legislature that the director of financial institutions [license], regulate, and subject to ongoing examination, nondepository lenders for the purpose of allowing such lenders to participate in the small business administration's 7(a) loan guaranty program. [1994 c 92 § 261; 1989 c 212 § 1.]

31.40.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Licensee" means a Washington corporation licensed under the terms of this chapter.

(2) "Director" means the director of financial institutions. [1994 c 92 § 262; 1989 c 212 § 2.]

31.40.030 Director—Powers and duties. (1) The director shall administer this chapter. The director may issue orders and adopt rules that, in the opinion of the director, are necessary to execute, enforce, and effectuate the purposes of this chapter. Rules to enforce the provisions of this chapter shall be adopted under the administrative procedure act, chapter 34.05 RCW.

(2) Whenever the director issues an order or a license under this chapter, the director may impose conditions that are necessary, in the opinion of the director, to carry out the purposes of this chapter.

(3) An application filed with the director under this chapter shall be in such a form and contain such information as the director may require.

(4) Any change of control of a licensee shall be subject to the approval of the director. Such approval shall be subject

to the same criteria as the criteria for approval of the original license. For purposes of this subsection, "change of control" means directly or indirectly, alone or in concert with others, to own, control, or hold the power to vote ten percent or more of the outstanding voting stock of a licensee or the power to elect or control the election of a majority of the board of directors of the licensee. [1994 c 92 § 263; 1989 c 212 § 3.]

31.40.040 Licensee—Powers and duties. (1) A licensee may participate in the 7(a) loan guaranty program of the small business administration pursuant to section 7(a) of the federal small business investment act of 1958, 15 U.S.C. Sec. 636(a), or any other government program for which the licensee is eligible and which has as its function the provision or facilitation of financing or management assistance to business firms. If a licensee participates in a program referred to in this section, the licensee shall comply with the requirements of that program.

(2) A licensee may be incorporated under either the Washington business corporation act or the Washington non-profit corporation act. In addition to the powers and privileges provided to a licensee by this chapter, a licensee has all the powers and privileges conferred by its incorporating statute which are not inconsistent with or limited by this chapter. [1989 c 212 § 4.]

31.40.050 License approval. After a review of information regarding the directors, officers, and controlling persons of the applicant for a license, a review of the applicant's business plan, including at least three years of detailed financial projections and other relevant information, and a review of such additional information as is considered relevant by the director, the director shall approve an application for a license if, and only if, the director determines that:

(1) The applicant is capitalized in an amount that is not less than five hundred thousand dollars and that such sum is adequate for the applicant to transact business as a nondepository 7(a) lender and that in evaluating the capital position of the applicant the director may consider and include the net worth of any corporate shareholder of the applicant corporation if the shareholder guarantees the liabilities of the applicant: PROVIDED, That such corporate shareholder be subject to the reporting requirements of RCW 31.40.080;

(2) Each director, officer, and controlling person of the applicant is of good character and sound financial standing; that the directors and officers of the applicant are competent to perform their functions with respect to the applicant; and that the directors and officers of the applicant are collectively adequate to manage the business of the applicant as a nondepository 7(a) lender;

(3) The business plan of the applicant will be honestly and efficiently conducted in accordance with the intent and purposes of this chapter; and

(4) The proposed activity possesses a reasonable prospect for success. [1994 c 92 § 264; 1989 c 212 § 5.]

31.40.060 Prohibited loans—Exception. (1) Either by itself or in concert with a director, officer, principal shareholder, or affiliate, or with another licensee, a licensee shall not hold control of a business firm to which it has made a loan under section 7(a) of the federal small business investment

act of 1958, 15 U.S.C. Sec. 636(a), except that, to the extent necessary to protect the licensee's interest as creditor of the business firm, a licensee that provides financing assistance to a business firm may acquire and hold control of that business firm. Unless the director approves a longer period, a licensee holding control of a business firm under this section shall divest itself of the interest which constitutes holding control as soon as practicable or within five years after acquiring that interest, whichever is sooner.

(2) For the purposes of subsection (1) of this section, "hold control" means alone or in concert with others:

(a) Ownership, directly or indirectly, of record or beneficially, of voting securities greater than:

(i) For a business firm with outstanding voting securities held by fewer than fifty shareholders, forty percent of the outstanding voting securities;

(ii) For a business firm with outstanding voting securities held by fifty or more shareholders, twenty-five percent of the outstanding voting securities;

(b) Being able to elect or control the election of a majority of the board of directors. [1994 c 92 § 265; 1989 c 212 § 6.]

31.40.070 Fees. (1) The director is authorized to charge a fee for the estimated direct and indirect costs of the following:

(a) An application for a license and the investigation thereof;

(b) An application for approval to acquire control of a licensee and the investigation thereof;

(c) An application for approval for a licensee to merge with another corporation, an application for approval for a licensee to purchase all or substantially all of the business of another person, or an application for approval for a licensee to sell all or substantially all of its business or of the business of any of its offices to another licensee and the investigation thereof;

(d) An annual license;

(e) An examination by the director of a licensee or a subsidiary of a licensee. Excess examiner time shall be billed at a reasonable rate established by rule.

(2) A fee for filing an application with the director shall be paid at the time the application is filed with the director.

(3) All such fees shall be deposited in the financial services regulation fund and administered consistent with the provisions of RCW 43.320.110. [2001 c 177 § 9; 1994 c 92 § 266; 1989 c 212 § 7.]

Additional notes found at www.leg.wa.gov

31.40.080 Records—Reports—Loan loss reserve. (1) A licensee shall keep books, accounts, and other records in such a form and manner as the director may require. These records shall be kept at such a place and shall be preserved for such a length of time as the director may specify.

(2) Not more than ninety days after the close of each calendar year or within a period specified by the director, a licensee shall file with the director a report containing the following:

(a) Financial statements, including the balance sheet, the statement of income or loss, the statement of changes in cap-

ital accounts and the statement of changes in financial position; and

(b) Other information that the director may require.

(3) Each licensee shall provide for a loan loss reserve sufficient to cover projected loan losses which are not guaranteed by the United States government or any agency thereof. [1994 c 92 § 267; 1989 c 212 § 8.]

31.40.090 Examination of licensees. (1) The director shall examine each licensee not less than once every twenty-four months.

(2) The director may with or without notice and at any time during regular business hours examine a licensee or a subsidiary of a licensee.

(3) A director, officer, or employee of a licensee or of a subsidiary of a licensee being examined by the director or a person having custody of any of the books, accounts, or records of the licensee or of the subsidiary shall otherwise facilitate the examination so far as it is in his or her power to do so.

(4) If in the director's opinion it is necessary in the examination of a licensee, or of a subsidiary of a licensee, the director may retain any certified public accountant, attorney, appraiser, or other person to assist the director. The licensee being examined shall pay the fees of a person retained by the director under this subsection. [2006 c 87 § 30; 1994 c 92 § 268; 1989 c 212 § 9.]

31.40.100 Application denial. If the director denies an application, the director shall provide the applicant with a written statement explaining the basis for the denial. [1994 c 92 § 269; 1989 c 212 § 10.]

31.40.110 Rules—Penalties. (1) The director shall adopt rules to enforce the intent and purposes of this chapter. Such rules shall include, but need not be limited to, the following:

(a) Disclosure of conflicts of interest;

(b) Prohibition of false statements made to the director on any form required by the director or during any examination requested by the director; or

(c) Prevention of fraud and undue influence by a licensee.

(2) A violation of any provision of this chapter or any rule of the director adopted under this chapter by an agent, employee, officer, or director of the licensee shall be punishable by a fine, established by the director, not to exceed one hundred dollars for each offense. Each day's continuance of the violation shall be a separate and distinct offense. Each such fine shall be credited to the financial services regulation fund. [2001 c 177 § 10; 1994 c 92 § 270; 1989 c 212 § 11.]

Additional notes found at www.leg.wa.gov

31.40.120 Injunction. If, in the opinion of the director, a person violates or there is reasonable cause to believe that a person is about to violate any provision of this chapter or any rule adopted under this chapter, the director may bring an action in the appropriate court to enjoin the violation or to enforce compliance. Upon a proper showing, a restraining order, preliminary or permanent injunction, shall be granted, and a receiver or a conservator may be appointed for the

defendant or the defendant's assets. [1994 c 92 § 271; 1989 c 212 § 12.]

31.40.130 Penalty—License impairment. The director may deny, suspend, or revoke a license if the applicant or holder violates any provision of this chapter or any rules promulgated pursuant to this chapter. [1994 c 92 § 272; 1989 c 212 § 13.]

31.40.135 Application of RCW 31.24.230. RCW 31.24.230 (1), (3), and (4) supersede any contrary provision of this chapter. [2006 c 87 § 29.]

31.40.900 Severability—1989 c 212. If any provision of this act or its application to any person or circumstance is held invalid or, if in the written opinion of the small business administration, is contrary to the intent and purposes of the 7(a) loan guaranty program, the director shall not enforce such provision but the remainder of the act or the application of the provision to other persons or circumstances shall not be affected. [1994 c 92 § 273; 1989 c 212 § 16.]

Chapter 31.45 RCW CHECK CASHERS AND SELLERS

Sections

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31.45.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

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

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

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

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

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

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

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

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

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

(11) "Financial institution" means a commercial bank, savings bank, savings and loan association, or credit union.

(12) "Installment plan" is a contract between a licensee and borrower that provides that the loaned amount will be repaid in substantially equal installments scheduled on or after a borrower's pay dates and no less than fourteen days apart.

(13) "Licensee" means a check casher or seller licensed by the director to engage in business in accordance with this chapter. "Licensee" also means a check casher or seller, whether located within or outside of this state, who fails to obtain the license or small loan endorsement required by this chapter.

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(14) "Loaned amount" means the outstanding principal balance and any fees authorized under RCW 31.45.073 that have not been paid by the borrower.

(15) "Origination date" means the date upon which the borrower and the licensee initiate a small loan transaction.

(16) "Outstanding principal balance" of a small loan means any of the principal amount that has not been paid by the borrower.

(17) "Paid" means that moment in time when the licensee deposits the borrower's check or accepts cash for the full amount owing on a valid small loan. If the borrower's check is returned by the borrower's bank for any reason, the licensee shall not consider the loan paid.

(18) "Person" means an individual, partnership, association, limited liability company, limited liability partnership, trust, corporation, and any other legal entity.

(19) "Principal" means the loan proceeds advanced for the benefit of the borrower in a small loan, excluding any fee or interest charge.

(20) "Rescission" means annulling the loan contract and, with respect to the small loan contract, returning the borrower and the licensee to their financial condition prior to the origination date of the loan.

(21) "Small loan" means a loan of up to the maximum amount and for a period of time up to the maximum term specified in RCW 31.45.073.

(22) "Termination date" means the date upon which payment for the small loan transaction is due or paid to the licensee, whichever occurs first.

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

(24) "Trade secret" means the same as defined in RCW 19.108.010. [2012 c 17 § 7; 2009 c 510 § 2; 2003 c 86 § 1; 1995 c 18 § 1; 1994 c 92 § 274; 1993 c 143 § 1; 1991 c 355 § 1.]

Finding—Intent—Liberal construction—2009 c 510: "The legislature finds that some small loan borrowers are unable to pay the entire loaned amount when it is due. Many of these borrowers take out multiple loans to pay off the original borrowed sum.

It is the legislature's intent to reduce or limit the number of borrowers taking out multiple loans by providing for installment plans that give a borrower a better opportunity to pay off their original small loan without having to resort to taking out a subsequent loan or loans.

This act shall be liberally construed to effectuate the legislature's intent to protect borrowers." [2009 c 510 § 1.]

31.45.020 Application of chapter. (1) This chapter does not apply to:

(a) Any financial institution or trust company authorized to do business in Washington;

(b) The cashing of checks, drafts, or money orders by any person who cashes checks, drafts, or money orders as a convenience, as a minor part of its customary business, and not for profit;

(c) The issuance or sale of checks, drafts, or money orders by any corporation, partnership, or association that has a net worth of not less than three million dollars as shown by audited financial statements; and

(d) The issuance or sale of checks, drafts, money orders, or other commercial paper serving the same purpose by any agent of a corporation, partnership, or association described in (c) of this subsection.

(2) Upon application to the director, the director may exempt a person from any or all provisions of this chapter upon a finding by the director that although not otherwise exempt under this section, the applicant is not primarily engaged in the business of cashing or selling checks and a total or partial exemption would not be detrimental to the public. [2003 c 86 § 2; 1994 c 92 § 275; 1991 c 355 § 2.]

31.45.022 Privacy or confidentiality of any information or material—Federal or other state's laws. (1) The requirements under any federal law or laws of another state regarding the privacy or confidentiality of any information or material provided to the department [of financial institutions], and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to that information or material, continues to apply to the information or material after the information or material has been disclosed to the department [of financial institutions]. If consistent with applicable law, the information and material may be shared with all state and federal regulatory officials without the loss of privilege or the loss of confidentiality protections provided by federal law or state law.

(2) When the department [of financial institutions] is a party to a memoranda of understanding or enforcement order issued by the consumer financial protection bureau, the privacy, confidentiality, or privilege accorded to the document by federal law continues to apply even after the memoranda or order has been signed by the director or a designee.

(3) Any requirement under chapter 42.56 RCW relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) or (2) of this section that is inconsistent with subsection (1) or (2) of this section is superseded by the requirements of this section. [2014 c 36 § 8.]

31.45.030 License required—Small loan endorsement—Application—Fee—Bond—Deposit in lieu of bond—Director's duties. (1) Except as provided in RCW 31.45.020, no check casher or seller may engage in business without first obtaining a license from the director in accordance with this chapter. A license is required for each location where a licensee engages in the business of cashing or selling checks or drafts.

(2) Each application for a license shall be in writing in a form prescribed by the director and shall contain the following information:

(a) The legal name, residence, and business address of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, and director thereof;

(b) The location where the initial registered office of the applicant will be located in this state;

(c) The complete address of any other locations at which the applicant proposes to engage in business as a check casher or seller; and

(d) Such other data, financial statements, and pertinent information as the director may require with respect to the applicant, its directors, trustees, officers, members, or agents.

(3) Any information in the application regarding the personal residential address or telephone number of the applicant, and any trade secret as defined in RCW 19.108.010

including any financial statement that is a trade secret, is exempt from the public records disclosure requirements of chapter 42.56 RCW.

(4) The application shall be filed together with an investigation and supervision fee established by rule by the director. Such fees collected shall be deposited to the credit of the financial services regulation fund in accordance with RCW 43.320.110.

(5)(a) Before granting a license to sell checks, drafts, or money orders under this chapter, the director shall require that the licensee file with the director a surety bond running to the state of Washington, which bond shall be issued by a surety insurer which meets the requirements of chapter 48.28 RCW, and be in a format acceptable to the director. The director shall adopt rules to determine the penal sum of the bond that shall be filed by each licensee. The bond shall be conditioned upon the licensee paying all persons who purchase checks, drafts, or money orders from the licensee the face value of any check, draft, or money order which is dishonored by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed. The bond shall only be liable for the face value of the dishonored check, draft, or money order, and shall not be liable for any interest or consequential damages.

(b) Before granting a small loan endorsement under this chapter, the director shall require that the licensee file with the director a surety bond, in a format acceptable to the director, issued by a surety insurer that meets the requirements of chapter 48.28 RCW. The director shall adopt rules to determine the penal sum of the bond that shall be filed by each licensee. A licensee who wishes to engage in both check selling and making small loans may combine the penal sums of the bonding requirements and file one bond in a form acceptable to the director. The bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of the licensee's violation of this chapter or any rules adopted under this chapter. The bond shall only be liable for damages suffered by borrowers as a result of the licensee's violation of this chapter or rules adopted under this chapter, and shall not be liable for any interest or consequential damages.

(c) The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director and licensee of its intent to cancel the bond. The cancellation is effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any liability of the licensee for tortious acts, whether or not such liability is imposed by statute or common law, or is imposed by contract. The bond shall not be a substitute or supplement to any liability or other insurance required by law or by the contract. If the surety desires to make payment without awaiting court action against it, the penal sum of the bond

shall be reduced to the extent of any payment made by the surety in good faith under the bond.

(d) Any person who is a purchaser of a check, draft, or money order from the licensee having a claim against the licensee for the dishonor of any check, draft, or money order by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed, or who obtained a small loan from the licensee and was damaged by the licensee's violation of this chapter or rules adopted under this chapter, may bring suit upon such bond or deposit in the superior court of the county in which the check, draft, or money order was purchased, or in the superior court of a county in which the licensee maintains a place of business. Jurisdiction shall be exclusively in the superior court. Any such action must be brought not later than one year after the dishonor of the check, draft, or money order on which the claim is based. In the event valid claims against a bond or deposit exceed the amount of the bond or deposit, each claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond, or deposit, without regard to the date of filing of any claim or action.

(e) In lieu of the surety bond required by this section, the applicant for a check seller license may file with the director a deposit consisting of cash or other security acceptable to the director in an amount equal to the penal sum of the required bond. In lieu of the surety bond required by this section, the applicant for a small loan endorsement may file with the director a deposit consisting of cash or other security acceptable to the director in an amount equal to the penal sum of the required bond, or may demonstrate to the director net worth in excess of three times the amount of the penal sum of the required bond.

The director may adopt rules necessary for the proper administration of the security or to establish reporting requirements to ensure that the net worth requirements continue to be met. A deposit given instead of the bond required by this section is not an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter. A deposit given instead of the bond required by this section is a fund held in trust for the benefit of eligible claimants under this section and is not an asset of the estate of any licensee that seeks protection voluntarily or involuntarily under the bankruptcy laws of the United States.

(f) Such security may be sold by the director at public auction if it becomes necessary to satisfy the requirements of this chapter. Notice of the sale shall be served upon the licensee who placed the security personally or by mail. If notice is served by mail, service shall be addressed to the licensee at its address as it appears in the records of the director. Bearer bonds of the United States or the state of Washington without a prevailing market price must be sold at public auction. Such bonds having a prevailing market price may be sold at private sale not lower than the prevailing market price. Upon any sale, any surplus above amounts due shall be returned to the licensee, and the licensee shall deposit with the director additional security sufficient to meet the amount required by the director. A deposit given instead of the bond required by this section shall not be deemed an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter. [2005 c 274 § 255; 2003 c 86 § 3;

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2001 c 177 § 11; 1995 c 18 § 4; 1994 c 92 § 276; 1993 c 176 § 1; 1991 c 355 § 3.]

Examination reports and information from financial institutions exempt: RCW 42.56.400.

Additional notes found at www.leg.wa.gov

31.45.040 Application for license or small loan endorsement—Financial responsibility—Director's investigation. (1) The director shall conduct an investigation of every applicant to determine the financial responsibility, experience, character, and general fitness of the applicant. The director shall issue the applicant a license to engage in the business of cashing or selling checks, or both, or a small loan endorsement, if the director determines to his or her satisfaction that:

(a) The applicant has satisfied the requirements of RCW 31.45.030;

(b) The applicant is financially responsible and appears to be able to conduct the business of cashing or selling checks or making small loans in an honest, fair, and efficient manner with the confidence and trust of the community; and

(c) The applicant has the required bonds, or has provided an acceptable alternative form of financial security.

(2) The director may refuse to issue a license or small loan endorsement if he or she finds that the applicant, or any person who is a director, officer, partner, agent, sole proprietor, owner, or controlling person of the applicant, has been convicted of a felony in any jurisdiction within seven years of filing the present application or is associating or consorting with any person who has been convicted of a felony in any jurisdiction within seven years of filing the present application. The term "substantial stockholder" as used in this subsection, means a person owning or controlling ten percent or more of the total outstanding shares of the applicant corporation.

(3) A license or small loan endorsement may not be issued to an applicant:

(a) Whose license to conduct business under this chapter, or any similar statute in any other jurisdiction, has been suspended or revoked within five years of the filing of the present application;

(b) Who has been banned from the industry by an administrative order issued by the director or the director's designee, for the period specified in the administrative order; or

(c) When any person who is a sole proprietor, owner, director, officer, partner, agent, or controlling person of the applicant has been banned from the industry in an administrative order issued by the director, for the period specified in the administrative order.

(4) A license or small loan endorsement issued under this chapter shall be conspicuously posted in the place of business of the licensee. The license is not transferable or assignable.

(5) A license or small loan endorsement issued in accordance with this chapter remains in force and effect until surrendered, suspended, or revoked, or until the license expires as a result of nonpayment of the annual assessment fee. [2003 c 86 § 4; 1996 c 13 § 1; 1995 c 18 § 5; 1994 c 92 § 277; 1991 c 355 § 4.]

31.45.043 Multistate licensing system—Director's discretion. Applicants may be required to make application

through a multistate licensing system as prescribed by the director. Existing licensees may be required to transition onto a multistate licensing system as prescribed by the director. [2012 c 17 § 8.]

31.45.045 Reports—Nationwide licensing system.

Each licensee on a nationwide licensing system shall submit reports of condition which must be in the form and must contain the information as the director may require. [2014 c 36 § 9.]

31.45.050 Investigation or examination fee and annual assessment fee required—Amounts determined by rule—Failure to pay—Notice requirements of licensee.

(1) Each applicant and licensee shall pay to the director an investigation or examination fee as established in rule and an annual assessment fee for the coming year in an amount determined by rule as necessary to cover the operation of the program. The annual assessment fee is due upon the annual assessment fee due date as established in rule. Nonpayment of the annual assessment fee may result in expiration of the license as provided in subsection (2) of this section. In establishing the fees, the director shall differentiate between check cashing and check selling and making small loans, and consider at least the volume of business, level of risk, and potential harm to the public related to each activity. The fees collected shall be deposited to the credit of the financial services regulation fund in accordance with RCW 43.320.110.

(2) If a licensee does not pay its annual assessment fee by the annual assessment fee due date as specified in rule, the director or the director's designee shall send the licensee a notice of suspension and assess the licensee a late fee not to exceed twenty-five percent of the annual assessment fee as established in rule by the director. The licensee's payment of both the annual assessment fee and the late fee must arrive in the department's offices by 5:00 p.m. on the tenth day after the annual assessment fee due date, unless the department is not open for business on that date, in which case the licensee's payment of both the annual assessment fee and the late fee must arrive in the department's offices by 5:00 p.m. on the next occurring day that the department is open for business. If the payment of both the annual assessment fee and the late fee does not arrive prior to such time and date, then the expiration of the licensee's license is effective at 5:00 p.m. on the thirtieth day after the assessment fee due date. The director or the director's designee may reinstate the license if, within twenty days after the effective date of expiration, the licensee:

(a) Pays both the annual assessment fee and the late fee; and

(b) Attests under penalty of perjury that it did not engage in conduct requiring a license under this chapter during the period its license was expired, as confirmed by an investigation by the director or the director's designee.

(3) If a licensee intends to do business at a new location, to close an existing place of business, or to relocate an existing place of business, the licensee shall provide written notification of that intention to the director no less than thirty days before the proposed establishing, closing, or moving of a place of business. [2003 c 86 § 5; 2001 c 177 § 12; 1996 c 13 § 2; 1995 c 18 § 6; 1994 c 92 § 278; 1991 c 355 § 5.]

Additional notes found at www.leg.wa.gov

31.45.060 Licensee—Schedule of fee and charges—Recordkeeping. (1) A schedule of the fees and the charges for the cashing and selling of checks, drafts, money orders, or other commercial paper serving the same purpose shall be conspicuously and continuously posted in every location licensed under this chapter. The licensee shall provide to its customer a receipt for each transaction. The receipt must include the name of the licensee, the type and amount of the transaction, and the fee or fees charged for the transaction.

(2) Each licensee shall keep and maintain such business books, accounts, and records as the director may require to fulfill the purposes of this chapter. Every licensee shall preserve such books, accounts, and records as required in rule by the director for at least two years from the completion of the transaction. Records may be maintained on an electronic, magnetic, optical, or other storage media. However, the licensee must maintain the necessary technology to permit access to the records by the department for the period required under this chapter.

(3) A check, draft, or money order sold by a licensee shall be drawn on an account of a licensee maintained in a federally insured financial institution authorized to do business in the state of Washington. [2003 c 86 § 6; 1994 c 92 § 279; 1991 c 355 § 6.]

31.45.070 Licensee—Permissible transactions—Restrictions. (1) No licensee may engage in a loan business; the negotiation of loans; or the discounting of notes, bills of exchange, checks, or other evidences of debt in the same premises where a check cashing or selling business is conducted, unless the licensee:

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

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

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

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

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

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

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

(3) Except as otherwise permitted in this chapter, no licensee may agree to hold a check or draft for later deposit. A licensee must deposit all checks and drafts cashed by the licensee as soon as practicable.

(4) No licensee may issue or cause to be issued any check, draft, or money order, or other commercial paper serving the same purpose, that is drawn upon the trust account of a licensee without concurrently receiving the full principal

amount, in cash, or by check, draft, or money order from a third party believed to be valid.

(5) Each licensee shall comply with all applicable state and federal statutes relating to the activities governed by this chapter. [2012 c 17 § 9; 2003 c 86 § 7; 1995 c 18 § 7; 1994 c 92 § 280; 1991 c 355 § 7.]

31.45.073 Making small loans—Endorsement required—Due date—Termination date—Maximum amount—Installment plans—Interest—Fees—Postdated check or draft as security. (1) No licensee may engage in the business of making small loans without first obtaining a small loan endorsement to its license from the director in accordance with this chapter. An endorsement will be required for each location where a licensee engages in the business of making small loans, but a small loan endorsement may authorize a licensee to make small loans at a location different than the licensed locations where it cashes or sells checks. A licensee may have more than one endorsement.

(2) A licensee must set the due date of a small loan on or after the date of the borrower's next pay date. If a borrower's next pay date is within seven days of taking out the loan, a licensee must set the due date of a small loan on or after the borrower's second pay date after the date the small loan is made. The termination date of a small loan may not exceed the origination date of that same small loan by more than forty-five days, including weekends and holidays, unless the term of the loan is extended by agreement of both the borrower and the licensee and no additional fee or interest is charged. The maximum principal amount of any small loan, or the outstanding principal balances of all small loans made by all licensees to a single borrower at any one time, may not exceed seven hundred dollars or thirty percent of the gross monthly income of the borrower, whichever is lower. A licensee is prohibited from making a small loan to a borrower who is in default on another small loan until after that loan is paid in full or two years have passed from the origination date of the small loan, whichever occurs first.

(3) A licensee is prohibited from making a small loan to a borrower in an installment plan with any licensee until after the plan is paid in full or two years have passed from the origination date of the installment plan, whichever occurs first.

(4) A borrower is prohibited from receiving more than eight small loans from all licensees in any twelve-month period. A licensee is prohibited from making a small loan to a borrower if making that small loan would result in a borrower receiving more than eight small loans from all licensees in any twelve-month period.

(5) A licensee that has obtained the required small loan endorsement may charge interest or fees for small loans not to exceed in the aggregate fifteen percent of the first five hundred dollars of principal. If the principal exceeds five hundred dollars, a licensee may charge interest or fees not to exceed in the aggregate ten percent of that portion of the principal in excess of five hundred dollars. If a licensee makes more than one loan to a single borrower, and the aggregated principal of all loans made to that borrower exceeds five hundred dollars at any one time, the licensee may charge interest or fees not to exceed in the aggregate ten percent on that portion of the aggregated principal of all loans at any one time that is in excess of five hundred dollars. The director may

determine by rule which fees, if any, are not subject to the interest or fee limitations described in this section. It is a violation of this chapter for any licensee to knowingly loan to a single borrower at any one time, in a single loan or in the aggregate, more than the maximum principal amount described in this section.

(6) In connection with making a small loan, a licensee may advance moneys on the security of a postdated check. The licensee may not accept any other property, title to property, or other evidence of ownership of property as collateral for a small loan. The licensee may accept only one postdated check per loan as security for the loan. A licensee may permit a borrower to redeem a postdated check with a payment of cash or the equivalent of cash. The licensee may disburse the proceeds of a small loan in cash, in the form of a check, or in the form of the electronic equivalent of cash or a check.

(7) No person may at any time cash or advance any moneys on a postdated check or draft in excess of the amount of goods or services purchased without first obtaining a small loan endorsement to a check casher or check seller license. [2009 c 510 § 3; 2003 c 86 § 8; 1995 c 18 § 2.]

Finding—Intent—Liberal construction—2009 c 510: See note following RCW 31.45.010.

31.45.077 Small loan endorsement—Application—Form—Information—Exemption from disclosure—Fees.

(1) Each application for a small loan endorsement to a check casher or check seller license must be in writing and in a form prescribed by the director and shall contain the following information:

(a) The legal name, residence, and business address of the applicant, and if the applicant is a partnership, corporation, or association, the name and address of every member, partner, officer, and director thereof;

(b) The street and mailing address of each location where the licensee will engage in the business of making small loans;

(c) A surety bond, or other security allowed under RCW 31.45.030, in the amount required; and

(d) Any other pertinent information, including financial statements, as the director may require with respect to the licensee and its directors, officers, trustees, members, or employees.

(2) Any information in the application regarding the licensee's personal residential address or telephone number, and any trade secrets of the licensee as defined under RCW 19.108.010 including any financial statement that is a trade secret, is exempt from the public records disclosure requirements of chapter 42.56 RCW.

(3) The application shall be filed together with an investigation and review fee established by rule by the director. Fees collected shall be deposited to the credit of the financial services regulation fund in accordance with RCW 43.320.110. [2005 c 274 § 256; 2003 c 86 § 9; 2001 c 177 § 13; 1995 c 18 § 3.]

Additional notes found at www.leg.wa.gov

31.45.079 Making small loans—Agent for a licensee or exempt entity—Federal preemption. A person may not engage in the business of making small loans as an agent for a licensee or exempt entity without first obtaining a small

loan endorsement to a check casher or check seller license under this chapter. An agent of a licensee or exempt entity engaged in the business of making small loans is subject to this chapter. To the extent that federal law preempts the applicability of any part of this chapter, all other parts of this chapter remain in effect. [2003 c 86 § 10.]

31.45.080 Trust funds—Deposit requirements—

Rules. (1) All funds received by a licensee or its agents from the sale of checks, drafts, money orders, or other commercial paper serving the same purpose constitute trust funds owned by and belonging to the person from whom they were received or to the person who has paid the checks, drafts, money orders, or other commercial paper serving the same purpose.

(2) All such trust funds shall be deposited in a bank, savings bank, or savings and loan association located in Washington state in an account or accounts in the name of the licensee designated "trust account," or by some other appropriate name indicating that the funds are not the funds of the licensee or of its officers, employees, or agents. Such funds are not subject to attachment, levy of execution, or sequestration by order of a court except by a payee, assignee, or holder in due course of a check, draft, or money order sold by a licensee or its agent. Funds in the trust account, together with funds and checks on hand and in the hands of agents held for the account of the licensee at all times shall be at least equal to the aggregate liability of the licensee on account of checks, drafts, money orders, or other commercial paper serving the same purpose that are sold.

(3) The director shall adopt rules requiring the licensee to periodically withdraw from the trust account the portion of trust funds earned by the licensee from the sale of checks, drafts, money orders, or other commercial paper serving the same purpose. If a licensee has accepted, in payment for a check, draft, money order, or commercial paper serving the same purpose issued by the licensee, a check or draft that is subsequently dishonored, the director shall prohibit the withdrawal of earned funds in an amount necessary to cover the dishonored check or draft.

(4) If a licensee or its agent commingles trust funds with its own funds, all assets belonging to the licensee or its agent are impressed with a trust in favor of the persons specified in subsection (1) of this section in an amount equal to the aggregate funds that should have been segregated. Such trust continues until an amount equal to the necessary aggregate funds have been deposited in accordance with subsection (2) of this section.

(5) Upon request of the director, a licensee shall furnish to the director an authorization for examination of financial records of any trust fund account established for compliance with this section.

(6) The director may adopt any rules necessary for the maintenance of trust accounts, including rules establishing procedures for distribution of trust account funds if a license is suspended, terminated, or not renewed. [1994 c 92 § 281; 1991 c 355 § 8.]

31.45.082 Delinquent small loan—Restrictions on collection by licensee or third party—Definitions. (1) A licensee shall comply with all applicable state and federal

laws when collecting a delinquent small loan. A licensee may charge a one-time fee as determined in rule by the director to any borrower in default on any loan or loans where the borrower's check has been returned unpaid by the financial institution upon which it was drawn. A licensee may take civil action under Title 62A RCW to collect upon a check that has been dishonored. If the licensee takes civil action, a licensee may charge the borrower the cost of collection as allowed under RCW 62A.3-515, but may not collect attorneys' fees or any other interest or damages as allowed under RCW 62A.3-515. A licensee may not threaten criminal prosecution as a method of collecting a delinquent small loan or threaten to take any legal action against the borrower which the licensee may not legally take.

(2) Unless invited by the borrower, a licensee may not visit a borrower's residence or place of employment for the purpose of collecting a delinquent small loan. A licensee may not impersonate a law enforcement official, or make any statements which might be construed as indicating an official connection with any federal, state, county, or city law enforcement agency, or any other governmental agency, while engaged in collecting a small loan.

(3) A licensee may not communicate with a borrower in such a manner as to harass, intimidate, abuse, or embarrass a borrower, including but not limited to communication at an unreasonable hour, with unreasonable frequency, by threats of force or violence, or by use of offensive language. A communication shall be presumed to have been made for the purposes of harassment if it is initiated by the licensee for the purposes of collection and:

(a) It is made with a borrower or spouse in any form, manner, or place, more than three times in a single week;

(b) It is made with a borrower at his or her place of employment more than one time in a single week or made to a borrower after the licensee has been informed that the borrower's employer prohibits such communications;

(c) It is made with the borrower or spouse at his or her place of residence between the hours of 9:00 p.m. and 7:30 a.m.; or

(d) It is made to a party other than the borrower, the borrower's attorney, the licensee's attorney, or a consumer reporting agency if otherwise permitted by law except for purposes of acquiring location or contact information about the borrower.

(4) A licensee is required to maintain a communication log of all telephone and written communications with a borrower initiated by the licensee regarding any collection efforts including date, time, and the nature of each communication.

(5) If a dishonored check is assigned to any third party for collection, this section applies to the third party for the collection of the dishonored check.

(6) For the purposes of this section, "communication" includes any contact with a borrower, initiated by the licensee, in person, by telephone, or in writing (including emails, text messages, and other electronic writing) regarding the collection of a delinquent small loan, but does not include any of the following:

(a) Communication while a borrower is physically present in the licensee's place of business;

(b) An unanswered telephone call in which no message (other than a caller ID) is left, unless the telephone call violates subsection (3)(c) of this section; and

(c) An initial letter to the borrower that includes disclosures intended to comply with the federal fair debt collection practices act.

(7) For the purposes of this section, (a) a communication occurs at the time it is initiated by a licensee regardless of the time it is received or accessed by the borrower, and (b) a call to a number that the licensee reasonably believes is the borrower's cell phone will not constitute a communication with a borrower at the borrower's place of employment.

(8) For the purposes of this section, "week" means a series of seven consecutive days beginning on a Sunday. [2009 c 13 § 1; 2003 c 86 § 11.]

31.45.084 Small loan installment plan—Terms—Restrictions. (1) If a borrower notifies a licensee that the borrower will be or is unable to repay a loan when it is due, the licensee must inform the borrower that the borrower may convert their small loan to an installment plan. The licensee must convert the small loan to an installment plan at the borrower's request. Each agreement for a loan installment plan must be in writing and acknowledged by both the borrower and the licensee. The licensee may not assess any other fee, interest charge, or other charge on the borrower as a result of converting the small loan into an installment plan. This installment plan must provide for the payment of the total of payments due on the small loan over a period not less than ninety days for a loan amount of up to and including four hundred dollars. For a loaned amount over four hundred dollars, the installment plan must be a period not less than one hundred eighty days. The borrower may pay the total of installments at any time. The licensee may not charge any penalty, fee, or charge to the borrower for prepayment of the loan installment plan by the borrower. Each licensee shall conspicuously disclose to each borrower in the small loan agreement or small loan note that the borrower has access to such an installment plan. A licensee's violation of such an installment plan constitutes a violation of this chapter.

(2) The licensee must return any postdated checks that the borrower has given to the licensee for the original small loan at the initiation of the installment plan.

(3) A licensee may take postdated checks for installment plan payments at the time the installment plan is originated. If any check accepted as payment under the installment plan is dishonored, the licensee may not charge the borrower any fee for the dishonored check. If a borrower defaults on the installment plan, the licensee may charge the borrower a one-time installment plan default fee of twenty-five dollars.

(4) If the licensee enters into an installment plan with the borrower through an accredited third party, with certified credit counselors, that is representing the borrower, the licensee's failure to comply with the terms of that installment plan constitutes a violation of this chapter. [2009 c 510 § 4; 2003 c 86 § 12.]

Finding—Intent—Liberal construction—2009 c 510: See note following RCW 31.45.010.

Additional notes found at www.leg.wa.gov

(2021 Ed.)

31.45.085 Loan application—Required statement—Rules. (1)(a) In addition to other disclosures required by this chapter, the application for a small loan must include a statement that is substantially similar to the following: "At the time you repay this loan, you should have sufficient funds to meet your other financial obligations. If you cannot pay other bills because you are paying off this debt, you should go into the installment plan offered in connection with this loan."

(b) The statement in (a) of this subsection must be on the front page of the loan application and must be in at least twelve point type.

(2) The director may adopt rules to implement this section. [2009 c 510 § 5.]

Finding—Intent—Liberal construction—2009 c 510: See note following RCW 31.45.010.

31.45.086 Small loans—Right of rescission. A borrower may rescind a loan, on or before the close of business on the next day of business at the location where the loan was originated, by returning the principal in cash or the original check disbursed by the licensee to fund the small loan. The licensee may not charge the borrower for rescinding the loan and shall return to the borrower any postdated check taken as security for the loan or any electronic equivalent. The licensee shall conspicuously disclose to the borrower this right of rescission in writing in the small loan agreement or small loan note. [2003 c 86 § 13.]

31.45.088 Small loans—Disclosure requirements—Advertising—Making loan. (1) When advertising the availability of small loans, if a licensee includes in an advertisement the fee or interest rate charged by the licensee for a small loan, then the licensee shall also disclose the annual percentage rate resulting from this fee or interest rate.

(2) When advertising the availability of small loans, compliance with all applicable state and federal laws and regulations, including the truth in lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. [Part] 226 constitutes compliance with subsection (1) of this section.

(3) When making a small loan, each licensee shall disclose to the borrower the terms of the small loan, including the principal amount of the small loan, the total of payments of the small loan, the fee or interest rate charged by the licensee on the small loan, and the annual percentage rate resulting from this fee or interest rate.

(4) When making a small loan, disclosure of the terms of the small loan in compliance with all applicable state and federal laws and regulations, including the truth in lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. [Part] 226 constitutes compliance with subsection (3) of this section. [2003 c 86 § 14.]

31.45.090 Report requirements—Disclosure of information—Rules. (1) Each licensee shall submit to the director, in a form approved by the director, a report containing financial statements covering the calendar year or, if the licensee has an established fiscal year, then for such fiscal year, within one hundred five days after the close of each calendar or fiscal year. The licensee shall also file such additional relevant information as the director may require. Any information provided by a licensee in an annual report that

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constitutes a trade secret under chapter 19.108 RCW is exempt from disclosure under chapter 42.56 RCW, unless aggregated with information supplied by other licensees in such a manner that the licensee's individual information is not identifiable. Any information provided by the licensee that allows identification of the licensee may only be used for purposes reasonably related to the regulation of licensees to ensure compliance with this chapter.

(2) A licensee whose license has been suspended or revoked shall submit to the director, at the licensee's expense, within one hundred five days after the effective date of such surrender or revocation, a closing audit report containing audited financial statements as of such effective date for the twelve months ending with such effective date.

(3) The director shall adopt rules specifying the form and content of such audit reports and may require additional reporting as is necessary for the director to ensure compliance with this chapter. [2005 c 274 § 257; 2003 c 86 § 15; 1994 c 92 § 282; 1991 c 355 § 9.]

31.45.093 Information system—Access—Required information—Fees—Rules. (1) The director must, by contract with a vendor or service provider or otherwise, develop and implement a system by means of which a licensee may determine:

- (a) Whether a consumer has an outstanding small loan;
- (b) The number of small loans the consumer has outstanding;
- (c) Whether the borrower is eligible for a loan under RCW 31.45.073;
- (d) Whether the borrower is in an installment plan; and
- (e) Any other information necessary to comply with this chapter.

(2) The director may specify the form and contents of the system by rule. Any system must provide that the information entered into or stored by the system is:

- (a) Accessible to and usable by licensees and the director from any location in this state; and
- (b) Secured against public disclosure, tampering, theft, or unauthorized acquisition or use.

(3) If the system described in subsection (1) of this section is developed and implemented, a licensee making small loans under this chapter must enter or update the required information in subsection (1) of this section at the time that the small loan transaction is conducted by the licensee.

(4) A licensee must continue to enter and update all required information for any loans subject to this chapter that are outstanding or have not yet expired after the date on which the licensee no longer has the license or small loan endorsement required by this chapter. Within ten business days after ceasing to make loans subject to this chapter, the licensee must submit a plan for continuing compliance with this subsection to the director for approval. The director must promptly approve or disapprove the plan and may require the licensee to submit a new or modified plan that ensures compliance with this subsection.

(5) If the system described in subsection (1) of this section is developed and implemented, the director shall adopt rules to set the fees licensees shall pay to the vendor or service provider for the operation and administration of the system and the administration of this chapter by the department.

(6) The director shall adopt rules establishing standards for the retention, archiving, and deletion of information entered into or stored by the system described in subsection (1) of this section.

(7) The information in the system described in subsection (1) of this section is not subject to public inspection or disclosure under chapter 42.56 RCW. [2009 c 510 § 6.]

Finding—Intent—Liberal construction—2009 c 510: See note following RCW 31.45.010.

31.45.100 Examination or investigation—Director's authority—Costs. The director or the director's designee may at any time examine and investigate the business and examine the books, accounts, records, and files, or other information, wherever located, of any licensee or person who the director has reason to believe is engaging in the business governed by this chapter. For these purposes, the director or the director's designee may require the attendance of and examine under oath all persons whose testimony may be required about the business or the subject matter of the investigation. The director or the director's designee may require the production of original books, accounts, records, files, or other information, or may make copies of such original books, accounts, records, files, or other information. The director or the director's designee may issue a subpoena or subpoena duces tecum requiring attendance and testimony, or the production of the books, accounts, records, files, or other information. The director shall collect from the licensee the actual cost of the examination or investigation. [2003 c 86 § 16; 1994 c 92 § 283; 1991 c 355 § 10.]

31.45.103 Subpoena authority—Application—Contents—Notice—Fees. (1) The director or authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

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

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

(3) The director or authorized assistants may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3). [2011 c 93 § 10.]

Finding—Intent—2011 c 93: See note following RCW 18.44.425.

31.45.105 Violations of chapter—Enforceability of transaction. (1) It is a violation of this chapter for any person subject to this chapter to:

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

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

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

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

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

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

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

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

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

(3) In addition to any other penalties, any transaction in violation of subsection (1) of this section is uncollectible and unenforceable. [2012 c 17 § 10; 2007 c 81 § 1.]

31.45.110 Violations or unsound financial practices—Statement of charges—Hearing—Sanctions—Director's authority—Statute of limitations. (1) The director may issue and serve upon a licensee or applicant, or any director, officer, sole proprietor, partner, or controlling person of a licensee or applicant, a statement of charges if, in the opinion of the director, any licensee or applicant, or any director, officer, sole proprietor, partner, or controlling person of a licensee or applicant:

(a) Is engaging or has engaged in an unsafe or unsound financial practice in conducting a business governed by this chapter;

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

(i) Any rules, orders, or subpoenas issued by the director under any act;

(ii) Any condition imposed in writing by the director in connection with the granting of any application or other request by the licensee; or

(iii) Any written agreement made with the director;

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

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

(e) Provides false statements or omits material information on an application;

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

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

(h) Commits a crime against the laws of any jurisdiction involving moral turpitude, financial misconduct, or dishonest dealings. For the purposes of this section, a certified copy of the final holding of any court, tribunal, agency, or administrative body of competent jurisdiction is conclusive evidence in any hearing under this chapter;

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

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

(k) Fails to disclose any information within his or her knowledge or fails to produce any document, book, or record in his or her possession for inspection by the director upon demand;

(l) Commits any act of fraudulent or dishonest dealing. For the purposes of this section, a certified copy of the final holding of any court, tribunal, agency, or administrative body of competent jurisdiction is conclusive evidence in any hearing under this chapter;

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

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

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

(a) Deny, revoke, suspend, or condition a license or small loan endorsement;

(b) Order the licensee or person to cease and desist from practices that violate this chapter or constitute unsafe and unsound financial practices;

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

(d) Order restitution or refunds to borrowers or other parties for violations of this chapter or take other affirmative action as necessary to comply with this chapter; and

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

(3) The proceedings to impose the sanctions described in subsection (2) of this section, including any hearing or appeal of the statement of charges, are governed by chapter 34.05 RCW. The statute of limitations on actions not subject to RCW 4.16.160 that are brought under this chapter by the director is five years.

(4) Unless the licensee or person personally appears at the hearing or is represented by a duly authorized representative, the licensee is deemed to have consented to the state-

ment of charges and the sanctions imposed in the statement of charges.

(5) Except to the extent prohibited by another statute, the director may engage in informal settlement of complaints or enforcement actions including, but not limited to, payment to the department for purposes of financial literacy and education programs authorized under RCW 43.320.150. [2014 c 36 § 7; 2012 c 17 § 11; 2003 c 86 § 17; 1994 c 92 § 284; 1991 c 355 § 11.]

31.45.120 Violations or unsound practices—Temporary cease and desist order—Director's authority. Whenever the director determines that the acts specified in RCW 31.45.110 or their continuation is likely to cause insolvency or substantial injury to the public, the director may also issue a temporary cease and desist order requiring the licensee to cease and desist from the violation or practice. The order becomes effective upon service upon the licensee and remains effective unless set aside, limited, or suspended by a court under RCW 31.45.130 pending the completion of the administrative proceedings under the notice and until such time as the director dismisses the charges specified in the notice or until the effective date of the cease and desist order issued against the licensee under RCW 31.45.110. [2003 c 86 § 18; 1994 c 92 § 285; 1991 c 355 § 12.]

31.45.130 Temporary cease and desist order—Licensee's application for injunction. Within ten days after a licensee has been served with a temporary cease and desist order, the licensee may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings pursuant to the notice served under RCW 31.45.120. The superior court has jurisdiction to issue the injunction. [1991 c 355 § 13.]

31.45.140 Violation of temporary cease and desist order—Director's application for injunction. In the case of a violation or threatened violation of a temporary cease and desist order issued under RCW 31.45.120, the director may apply to the superior court of the county of the principal place of business of the licensee for an injunction. [1994 c 92 § 286; 1991 c 355 § 14.]

31.45.150 Licensee's failure to perform obligations—Director's duty. Whenever as a result of an examination or report it appears to the director that:

- (1) The capital of any licensee is impaired;
- (2) Any licensee is conducting its business in such an unsafe or unsound manner as to render its further operations hazardous to the public;
- (3) Any licensee has suspended payment of its trust obligations;
- (4) Any licensee has refused to submit its books, papers, and affairs to the inspection of the director or the director's examiner;
- (5) Any officer of any licensee refuses to be examined under oath regarding the business of the licensee;
- (6) Any licensee neglects or refuses to comply with any order of the director made pursuant to this chapter unless the

enforcement of such order is restrained in a proceeding brought by such licensee;

the director may immediately take possession of the property and business of the licensee and retain possession until the licensee resumes business or its affairs are finally liquidated as provided in RCW 31.45.160. The licensee may resume business upon such terms as the director may prescribe. [1994 c 92 § 287; 1991 c 355 § 15.]

31.45.160 Director's possession of property and business—Appointment of receiver. Whenever the director has taken possession of the property and business of a licensee, the director may petition the superior court for the appointment of a receiver to liquidate the affairs of the licensee. During the time that the director retains possession of the property and business of a licensee, the director has the same powers and authority with reference to the licensee as is vested in the director under chapter 31.04 RCW, and the licensee has the same rights to hearings and judicial review as are granted under chapter 31.04 RCW. [1997 c 101 § 4; 1994 c 92 § 288; 1991 c 355 § 16.]

31.45.180 Violation—Misdemeanor. Any person who violates or participates in the violation of any provision of the rules or orders of the director or of this chapter is guilty of a misdemeanor. [1994 c 92 § 290; 1991 c 355 § 18.]

31.45.190 Violation—Consumer protection act—Remedies. The legislature finds and declares that any violation of this chapter substantially affects the public interest and is an unfair and deceptive act or practice and an unfair method of competition in the conduct of trade or commerce as set forth in RCW 19.86.020. Remedies available under chapter 19.86 RCW shall not affect any other remedy the injured party may have. [1991 c 355 § 19.]

31.45.200 Director—Broad administrative discretion. The director has the power, and broad administrative discretion, to administer and interpret the provisions of this chapter to ensure the protection of the public. [1994 c 92 § 291; 1991 c 355 § 20.]

31.45.210 Military borrowers—Licensee's duty—Definition. (1) A licensee shall:

- (a) When collecting any delinquent small loan, not garnish any wages or salary paid for service in the armed forces;
- (b) Defer for the duration of the posting all collection activity against a military borrower who has been deployed to a combat or combat support posting for the duration of the posting;
- (c) Not contact the military chain of command of a military borrower in an effort to collect a delinquent small loan;
- (d) Honor the terms of any repayment agreement between the licensee and any military borrower, including any repayment agreement negotiated through military counselors or third party credit counselors; and
- (e) Not make a loan from a specific location to a person that the licensee knows is a military borrower when the military borrower's commander has notified the licensee in writing that the specific location is designated off-limits to military personnel under their command.

(2) For purposes of this section, "military borrower" means any active duty member of the armed forces of the United States, or any member of the national guard or the reserves of the armed forces of the United States who has been called to active duty. [2005 c 256 § 1.]

31.45.900 Effective date, implementation—1991 c 355. This act shall take effect January 1, 1992. The director shall take such steps as are necessary to ensure that this act is implemented on its effective date. [1994 c 92 § 292; 1991 c 355 § 24.]

31.45.901 Effective date—2009 c 510. This act takes effect January 1, 2010. [2009 c 510 § 10.]

