

HOUSE BILL REPORT

HB 2081

As Reported by House Committee On:
Consumer Protection & Business

Title: An act relating to regulating home equity sharing agreements under the consumer loan act.

Brief Description: Regulating home equity sharing agreements under the consumer loan act.

Sponsors: Representatives Hackney, Walen, Taylor, Reeves, Leavitt, Gregerson, Orwall, Reed, Berry, Callan, Macri and Chopp.

Brief History:

Committee Activity:

Consumer Protection & Business: 1/17/24, 1/31/24 [DPS].

Brief Summary of Substitute Bill

- Requires the Department of Financial Institutions to study and make recommendations on the need for regulating home equity sharing agreements.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Walen, Chair; Reeves, Vice Chair; Robertson, Ranking Minority Member; McClintock, Assistant Ranking Minority Member; Chapman, Connors, Donaghy, Hackney, Ryu, Sandlin, Santos and Volz.

Staff: Megan Mulvihill (786-7304).

Background:

Consumer Loan Act.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

The Consumer Loan Act (Act) authorizes the Department of Financial Institutions (DFI) to regulate consumer loan companies who conduct business in Washington. Consumer loan companies include mortgage lenders and consumer finance companies. Under the Act, no person may engage in the business of making a secured or unsecured loan without a license, except for exempt entities. Residential mortgage loans are regulated under the Act and are considered loans primarily for personal, family, or household use that are 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. The Act limits the rates and fees lenders may charge on loans, restricts certain loan provisions such as prepayment penalties, requires lenders to fully disclose loan terms, and prohibits lenders from engaging in unfair and deceptive acts and practices.

Under the Act, 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. A lender may charge:

- interest up to 25 percent per annum as determined by the simple interest method of calculating interest owed; and
- a nonrefundable, prepaid loan origination fee, not to exceed 4 percent of the first \$20,000 and 2 percent of the sum above \$20,000. The fee may be included in the principal balance of the loan.

Licenses are prohibited from engaging in specified practices, including fraud, deception, failure to disclose, unfair business practices, and other acts that might adversely affect consumers or thwart the regulatory process. Violations of the Act constitute unfair or deceptive acts or practices and are violations of the Consumer Protection Act.

Summary of Substitute Bill:

The DFI must conduct a study on home equity sharing agreements that reviews the need for regulation, along with recommendations for future legislation. The study must:

- include data and information on home equity sharing agreements;
- review how home equity sharing agreements are advertised and marketed to consumers;
- identify a potential licensing structure;
- review the disclosures and contracts provided to homeowners;
- review how discounts, exchange ratios, or other mechanisms for embedded returns are used;
- identify the need for potential caps or limits on equity returns;
- identify the need for prohibiting certain practices; and
- evaluate the potential impact to the home equity sharing market if potential regulations are implemented.

The DFI must consult with members of the home equity sharing agreement industry,

consumers, and others as necessary. The DFI must submit a report to the Legislature by December 1, 2024, with recommendations regarding regulations for home equity sharing agreements. The study expires August 1, 2025.

Substitute Bill Compared to Original Bill:

The substitute bill strikes everything in the underlying bill, and instead requires the DFI to study and make recommendations on the need for regulating home equity sharing agreements.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 1, 2024.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Home equity sharing agreements are in essence a contract between an investor and a homeowner. A sum of money is exchanged for future equity in the home. There are no current regulations or limits for these financial instruments, and it opens the door for deceptive practices. They are sometimes referred to as home equity taking agreements. These products are subprime mortgages of a different vehicle, and they should be regulated as home mortgages. The legislation would regulate home equity sharing agreements under the Consumer Loan Act and place them under the authority of the DFI. It would also place some restrictions on the amount of equity that can be traded and prevent certain restrictions placed on the property. If modest regulation will destroy the product, that says more about the product than the law.

Regulations are needed to protect Washington homeowners. A family had a home they bought in the 1980s that is their primary asset. They entered into an agreement with a home equity sharing company in 2019 and received an investment payment of \$64,000. The company reported a deed of trust on their home. When the family explored selling their home in 2021, they were shocked to discover that after paying off the company and their primary mortgage, they would take almost nothing from the sale of a home they have owned for more than 30 years. Another woman bought her first home in 2009, and faced financial difficulties in 2019 after some expensive medical bills. She did not understand the home equity sharing agreement application process, but it seemed like a mortgage loan. The company paid her \$70,250, of which \$2,700 was in loan transaction fees. She looked at refinancing and could not because there was a lien on her house from the home equity sharing agreement. In 2022 she sold the house for \$810,000, and of that she received \$80,000 and the company received \$274,000 in just two years.

There are conversations happening with stakeholders as the intent is not to inadvertently ban these financial instruments. It is believed that the DFI is the appropriate regulatory entity, and there is some restriction needed, but other restrictions could be further looked at.

(Opposed) Millions of homeowners cannot access home equity with a loan. This product uses equity to solve a debt problem. Home equity sharing companies can say yes when a lender says no. Home equity sharing agreements have extensive disclosures, customer education, and require mandatory acknowledgement from the customer.

One daughter bought the family home and then went to law school for three years. The opportunity to refinance the family home was not available. If it were not for the home equity sharing agreement, the daughter could not do the necessary home maintenance. There was an extensive education process. Home equity sharing agreements are fair, and are basically a secured loan. They do not need heavy regulation.

It is suggested to revise the cap amount, as many products already have an effective capping mechanism in place. The mechanics of a home equity sharing agreement do not make sense for a residential loan. There is no interest charged. Home equity sharing agreements should be regulated in a way that recognizes their structure.

(Other) The company shares in the value of the home from the beginning of the contract to the end. These products only do well if the homeowner does well. If the market does not do well, the company risks money. The industry is not opposed to regulation, but limiting the ability to place a lien on the property or not attach to the title would eliminate the product. The right way to do this is through the DFI doing an extensive investigation of the market, the companies, and the products.

Persons Testifying: (In support) Representative David Hackney, prime sponsor; Blythe Chandler, Terrell Marshall Law Group; Mary Veneziani; Emily Murphy, Northwest Consumer Law Center; Carl Smith; and Shaun Scott.

(Opposed) Joshua Gaffney, Hometap Equity Partners, Limited Liability Company; and Isaac Kastama and James Riccitelli, Unlock Technologies.

(Other) Ryan Downs, Unison.

Persons Signed In To Testify But Not Testifying: Malena Pinkham, Northwest Justice Project; Andrew Pizor, National Consumer Law Center; Deepak Kumar, Splitero Incorporated; Cobi Clark; Rolando Villanueva; Matthew Windsor, Point Digital Finance, Incorporated; John Arens, Redwood Trust; Gary Weiman; and Laszlo Ladi and Thomas Sponholtz, Unison.