HOUSE BILL REPORT
SSB 6025

As Reported by House Committee On:
Consumer Protection & Business

Title: An act relating to protecting consumers from predatory loans.

Brief Description: Protecting consumers from predatory loans.

Sponsors: Senate Committee on Business, Financial Services, Gaming & Trade (originally sponsored by Senators Stanford, Dhingra, Frame, Hasegawa, Kuderer, Nguyen, Saldaña, Trudeau, Valdez and Wilson, C.).

Brief History:
Committee Activity:
Consumer Protection & Business: 2/14/24, 2/16/24 [DP].

Brief Summary of Substitute Bill

- Makes any attempt to evade the Consumer Loan Act (Act) a violation of the Act.
- Makes nonresidential mortgage loans made by an unlicensed person who is subject to the Act null, void, uncollectable, and unenforceable.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: Do pass. Signed by 11 members: Representatives Walen, Chair; Reeves, Vice Chair; Robertson, Ranking Minority Member; McClintock, Assistant Ranking Minority Member; Chapman, Connors, Donaghy, Hackney, Ryu, Sandlin and Santos.

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 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. 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.

Licensees 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. In addition, if an unlicensed person makes a loan, any fees or interest charged must be refunded to the borrower.

Summary of Bill:

The Act applies to loans made to persons physically located in the state, not just residents.

A person is prohibited from engaging in any device, subterfuge, or pretense to evade the Act, including:

- making loans disguised as personal property sale and leaseback transactions;
- disguising loan proceeds as a cash rebate for the pretextual installment sale of goods or services; or
- making, offering, assisting, or arranging a debtor to obtain a loan with a greater rate of interest, consideration, or charge than permitted through any method, including mail, telephone, internet, or any electronic means regardless of whether the person has a physical location in the state.

If a loan exceeds the rate permitted under the Act, a person making a loan is subject to the Act even if the person is acting as an agent, service provider, or in another capacity that is exempt from the Act, if:

- the person holds, acquires, or maintains, directly or indirectly, the predominant economic interest in the loan; or

- the totality of the circumstances indicate that the person is the lender, and the transaction is structured to evade the Act.

It is a violation of the Act to engage in any device, subterfuge, or pretense to evade the requirements of the Act, including making, offering, or assisting a borrower to obtain a loan with a greater rate of interest, consideration, or charge than is permitted.

Except for residential mortgage loans, a loan made by a person violating the licensing requirement of the Act is null, void, uncollectable, and unenforceable.

A person that extends money or credit to another person while representing that individual in a legal proceeding where the person stands to receive a portion of an award or settlement from the legal action is exempt from the Act. However, the exemption does not apply if the person requires repayment in the event the person does not prevail in the civil proceeding.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The bill addresses lending by Financial Technology (Fintech) companies who have partnerships with out-of-state banks. The Department of Financial Institutions (DFI) conducted a survey of 10 loan companies making loans under these partnerships in the state. Three responded, and the DFI found that there is $18 million in loans outstanding, 6,700 borrowers, and the interest rates range from 19 to 225 percent. Under the bill, the DFI would be allowed to distinguish between loans being made by banks and loans being made by loan companies that are using banks in a relationship that allows them to avoid the limitations of state law. It codifies the widely accepted true lender test by looking at who has the predominant economic interest in the loan. Other factors include who is marketing the loan, underwriting it, servicing it, and collecting on the loan. The DFI would look at the totality of the circumstances to determine whether the loan is indeed exempt from the law. The legislation clarifies what a loan product is and ensures all loan products are governed under the same regulations.

Washingtonians are receiving solicitations for loan products that do not indicate the interest rate. They end up with loans that have interest rates in excess of 100 percent despite the fact that banks are not permitted to loan at that rate. This is a rent-a-bank scheme, and it traps individuals in a debt cycle. No Washingtonian needs a loan with a 200 percent interest rate. Other states have taken steps to regulate this practice because these loans are as counterproductive as payday lending and subprime mortgages. While there are legitimate reasons why someone might need access to a quick loan, excessive interest rates make future financial goals incredibly difficult to achieve by diverting funds from savings, limiting educational opportunities, or forcing difficult decisions in the face of unexpected medical expenses. That single monthly expense has the power to dictate the available pathways to prosperity for generations. Connecticut, Illinois, Maine, Minnesota, and New Mexico have all passed similar legislation, and this has pushed out high cost lenders without the sky falling.

(Opposed) While we agree with protecting consumers from predatory loans, this legislation would create unfair standards. It is incongruent with judicial precedence. Banks are the true lenders, and the predominant economic interest test is opposed because it does not accurately reflect the bank-Fintech partnership. Fintech companies service loans provided by state chartered Federal Deposit Insurance Commission banks to Washington customers who lack access to traditional credit. There is high demand for subprime credit access in Washington, where a third of the population is subprime and is not served by traditional lending institutions. In 2023 one Fintech company helped process 76,000 applications from consumers in Washington and facilitated 19,000 loans. Customers applying for these loans have no where else to turn. Unfortunately, less than 2 percent of consumers receive loan offers, thus it is evidently clear that these consumers cannot get credit at better rates. If Washington state banks have not chosen to make credit available to these consumers, why would they choose to do so if this legislation passes? These borrowers cannot necessarily take on more work or sell plasma to get the funds they need. The rates that the banks charge through Fintech platforms are less than half of the statutory allowed payday rate of 391 percent, but if we exit the market, payday loans will be the only option for these consumers. The supply can be removed, but that will not remove demand or risk. A Federal Reserve study on the Illinois law found that nearly 60 percent of subprime consumers had been unable to borrow necessary funds, and 80 percent said they wanted the option to return to their previous lender.

Persons Testifying: (In support) Sam Leonard, Northwest Consumer Law Center; Ryan Davis, Financial Empowerment Network; Shaun Scott; and Drew Bouton, Washington State Department of Financial Institutions.

(Opposed) Ian Moloney, American Fintech Council; and Joseph Rubin, Opportunity Financial.

Persons Signed In To Testify But Not Testifying: None.