

SENATE BILL REPORT

ESSB 5400

As Passed Senate, March 12, 2009

Title: An act relating to reverse mortgage lending.

Brief Description: Regulating reverse mortgage lending practices.

Sponsors: Senate Committee on Financial Institutions, Housing & Insurance (originally sponsored by Senators Tom, Berkey, Benton, McCaslin, Shin, Roach and Kline; by request of Department of Financial Institutions).

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 2/18/09, 2/24/09 [DPS, w/oRec].

Passed Senate: 3/12/09, 47-0.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: That Substitute Senate Bill No. 5400 be substituted therefor, and the substitute bill do pass.

Signed by Senators Berkey, Chair; Hobbs, Vice Chair; Franklin and McDermott.

Minority Report: That it be referred without recommendation.

Signed by Senators Parlette and Schoesler.

Staff: Philip Brady (786-7460)

Background: The Consumer Lending Act (CLA) was first passed in 1991 in order to protect Washington consumers from high-interest lenders. It was a combination of the Consumer Finance Act and the Industrial Loan Act, and has been amended several times. Under the CLA, a person or business is not permitted to engage in the business of making secured or unsecured loans without a license from the Department of Financial Institutions (DFI).

Reverse mortgage loans are transactions in which a borrower receives a loan against the equity in that person's home. The homeowner receives either a lump sum or periodic payments from the lender while the lender accumulates interest in the home's equity. When the borrower dies, sells the home, or moves, the loan becomes due and is usually paid out of any funds generated by sale or transfer of the home. There are two major kinds of reverse mortgage loans: 1) home equity conversion mortgages (HECMs), transactions approved by

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the Federal Department of Housing and Urban Development and subject to its regulation; and 2) proprietary reverse mortgage loans, loan products created by individual lenders that do not fall under the HECM program. There are no specific laws in Washington that deal with proprietary reverse mortgage transactions.

DFI regulates consumer loan companies doing business in Washington. Consumer loan companies include mortgage lenders and consumer finance companies.

Collections agencies are regulated by the state of Washington. Among other restrictions, licensees of collections agencies may not harass, intimidate, threaten, or embarrass debtors. Harassment includes communications which are made more than three times in one week; at the debtor's place of employment more than once in a week; or with the debtor at the debtor's home between 9:00 p.m. and 7:30 a.m.

Summary of Engrossed Substitute Bill: Lenders who are licensed by DFI under the CLA must meet two requirements in order to offer proprietary reverse mortgage loans: (1) they must maintain irrevocable letters of credit sufficient to meet known and expected mortgage payments for the next 12 months; and (2) they must maintain at least \$10 million of capital or have a binding written commitment for at least that amount from a parent company. Lenders are exempt from these requirements if they have strong enough credit, fully disburse the proceeds of loans at the time of closing, or if the loans are sold into a secondary market to an investor with a strong enough credit rating.

Lenders cannot offer proprietary reverse mortgage loan products unless those products have been preapproved by DFI. DFI is authorized to adopt rules regarding a preapproval process. In addition to any other DFI requirements, proprietary reverse mortgages products must include (1) penalty-free prepayment at any time during the term of the mortgage; (2) penalties for the lender if payments to the borrower are late; (3) loan maturation on the sale of the home, the borrower moving from the home, or a defaulting event; (4) no requirement that the borrower also purchase an annuity or any other insurance product; (5) referral to an independent housing counseling agency; (6) receipt of a certification that counseling has occurred before final acceptance; (7) a borrower who is at least 60 years old; and (8) a requirement that all payments go to the borrower or a designated representative rather than an intermediary or third party. Borrowers have a three day right of rescission.

Loan originators must maintain safeguards to ensure that persons offering reverse mortgage loans do not offer any other financial or insurance products, and that purchase of these products are not a condition of the loan.

Applicants must receive a specified disclosure form before lenders may accept applications, and lenders must provide disclosure statements at least annually. Disclosure statements must include details of the loan advances, balances, the name and telephone number of an employee able to answer questions concerning reverse mortgage loans, and other terms. If the lender defaults and fails to cure the default on any reverse mortgage loan, the borrower is entitled to treble damages. Though they are not subject to most regulations in this act, default on a HECM is considered a violation of this act.

As long as it does not conflict with federal law, proceeds from proprietary reverse mortgage loans are treated as proceeds from a loan and not income for the purposes of means-tested aid programs.

Communication with a debtor by a collection agency's licensee that does not clearly identify the communication as coming from a licensee is considered harassment.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: There has been trouble with other mortgage institutions and products, and people who were doing subprime mortgages are looking for a new market. The people doing reverse mortgages are vulnerable. They're usually older and in desperate financial circumstances. This regulation will protect the people of Washington by invoking the same requirements as the existing federal program. It only applies to proprietary products, and while it's not perfect, it will help people.

OTHER: Generally a good idea, but changes are needed. A three day right of rescission should be included. Lenders should also be prevented from cross-selling all other insurance products, not just annuities. Wealthy seniors aren't the people who are taking reverse mortgages.

Persons Testifying: PRO: Senator Tom, prime sponsor; Deb Bortner, DFI.

OTHER: Amy Crewdson, Columbia Legal Services; Eden Greer, AARP; Allen Morrow, Senior Lobby.