HOUSE BILL REPORT
HB 1923

As Reported by House Committee On:
Business & Financial Services

Title: An act relating to income share agreements.

Brief Description: Regulating income share agreements.

Sponsors: Representatives Zeiger, Bergquist, Kirby, Haler, Hargrove and Parker.

Brief History:
Committee Activity:
Business & Financial Services: 2/17/15, 2/18/15 [DPS].

Brief Summary of Substitute Bill

- Creates a regulatory structure for income share agreements, an alternative to student loans, through which individuals agree to pay a percentage of their future income in exchange for funds provided to pay for higher education.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Kirby, Chair; Vick, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Blake, G. Hunt, Kochmar and McCabe.

Minority Report: Do not pass. Signed by 2 members: Representatives Ryu, Vice Chair; Santos.

Minority Report: Without recommendation. Signed by 1 member: Representative Stanford.

Staff: Linda Merelle (786-7092).

Background:

Federal Student Loans and Repayment Plans.

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

The federal government offers both grants and loans to support students to access and complete higher education. Federal loans available to undergraduates include the Subsidized and Unsubsidized Stafford Loans, the Perkins Loan made through a college or university, and loans made to parents on behalf of dependent undergraduate students. Federal loans are also available to graduate students.

All federal student loans can be consolidated into a consolidation loan after a borrower leaves school. The interest rate on the loan is fixed, and is set at the weighted average of the interest rates on the underlying loans. A standard repayment plan is for 10 years. Graduated repayment plans can have a 10- to 30-year repayment term. Consolidation loans also offer extended repayment terms depending on the total value of the loan.

In addition, students may also be eligible for a federal income-driven repayment plan that allows borrowers to make monthly payments based on their income if their student debt is higher than their annual income or a significant portion of their annual income. An income-driven repayment plan sets a monthly payment as a percentage of the person's discretionary income rather than a portion of the debt. The payment amount will vary depending on the plan and when the person took out the federal student loan.

There are three income-driven repayment plans available. Under the Income-Based Repayment Plan (IBR Plan), non-new borrowers generally pay 15 percent of their discretionary income for 25 years. New borrowers on or after July 1, 2014, pay 10 percent for 20 years. Under the Pay As You Earn Repayment Plan (Pay As You Earn Plan), borrowers generally pay 10 percent of their discretionary income for 20 years. Under the Income-Contingent Repayment Plan (ICR Plan), borrowers pay the lesser of 20 percent of their discretionary income for 25 years or the amount they would pay on a fixed-payment plan over the course of 12 years, adjusted according to income. At the end of any of these plans, any unpaid loan balance is forgiven.

If a borrower's calculated IBR Plan or Pay As You Earn Plan payment amount, which is based on family size and income, is more than what he or she would pay under the 10-year standard repayment plan, the borrower does not qualify. All of the federal student loans, except federal student loans to parents, are eligible for the IBR Plan. Federal graduate or professional loans are also eligible.

Discretionary Income.

For an IBR Plan and a Pay As You Earn Plan, discretionary income is the difference between a borrower's income and 150 percent of the poverty guideline based on family size and state of residence. For an ICR Plan, discretionary income is the difference between the borrower's income and 100 percent of the poverty guideline based on family size and state of residence.

Public Service Loan Forgiveness Program.

In addition to the income-driven repayment plan options, a person who decides to work full-time in a public service job may qualify for having the remaining balance of their loans forgiven. That person needs to have made 120 qualifying payments on those loans while they have been employed full-time as a public service employee. Public service employment includes a federal, state, or local government agency, entity, or organization or a not-for-profit 501(c)(3) organization. Full-time status means at least 30 hours per week.

Some loans are not eligible for this option unless they are consolidated into a Direct Consolidation Loan. Only the payments made under the Direct Consolidation Loan count towards the 120 qualifying payment requirement.

A public service employee making payments under an income-driven repayment plan would qualify for loan forgiveness for any remaining balance of student loan debt at the end of 10 years of payments, rather than 20 or 25 years.

Summary of Substitute Bill:

An income share agreement (Agreement) is an alternative method of financing postsecondary education or other work force development, or similar activities. The originators of these Agreements (Originators) are regulated by the Department of Financial Institutions (DFI). An individual enters into an Agreement with an Originator. Each Agreement must:

- specify the percentage of future income which the individual is obligated to pay;
- specify the maximum duration of the obligation, which may not exceed 360 months (30 years), unless the duration has been extended, as allowable under the provisions of the act;
- specify that at least the first $10,000 of an individual's income is exempt when determining annual income, and this amount must be adjusted annually to reflect changes in the Consumer Price Index; and
- specify the terms and conditions by which the individual may extinguish his or her obligations before the end of the payment period specified in the Agreement.

Annual notice must be provided for the individual regarding any updated threshold amounts for exemption.

Each Agreement must disclose in clear and simple language:

- the definition of "income" to be used for the purposes of calculating the individual's obligation;
- the percentage of income committed;
- the duration of the obligation and the circumstances under which it may be extended;
- that the Agreement is not a debt instrument;
- that the amount paid under the Agreement may be more or less than payments made on behalf of the individual;
- that the Originator has no rights regarding the individual's actions relating to education or employment pursuits; and
- whether payments may be accelerated and under which conditions.

No individual may enter into an Agreement if the total percentage of his or her future income obligated under the Agreement and any other Agreement exceeds 15 percent of future income. Any Agreement entered into in violation of this percentage limitation is unenforceable against the individual. The duration of the Agreement may be extended for a period of time equal to the time that the individual's income is less than the exempt amount established in the Agreement. In the event of a sale of the Agreement by the Originator, the buyer is subject to the regulatory requirements that govern the Agreements. Any buyer of an Agreement must be a licensee or have a servicer for the Agreement who is a licensee.

License Required.

No person may originate an Agreement without first obtaining and maintaining a license. Each licensed Originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry (NMLSR). If an Agreement is originated by a person without a license, any fees or interest charged in the making of the Agreement must be refunded. The applicant for a license must submit an application, any license fee, and an investigation fee as determined by rule of the Director of the DFI (Director) to be sufficient to cover the Director's costs in administering the provisions under the act. Each applicant must file and maintain a surety bond. A license is not transferable or assignable.

In addition to the application and fee requirements, an applicant or any of its officers or principals must be free of any gross misdemeanor convictions involving dishonesty or financial misconduct or any felony violations of the banking laws of the United States within seven years of filing an application. The Director may issue more than one license to the same licensee for different business addresses.

Regulatory Structure.

The regulatory structure and licensing requirements for Agreements parallel the structure and requirements under the Consumer Loan Act, which authorizes the DFI to regulate consumer loan companies who conduct business in Washington.

The Director may deny, condition, revoke, or suspend licenses for failure to meet the requirements of the act, including the discovery of a fact or condition that existed at the time of the original application that would have allowed the Director to deny the original application.

The Director may impose fines of up to $100 per day, per violation of the act or failure to comply with any directive, order, or subpoena issued by the Director. The Director may order a licensee or employee to cease and desist from conducting business in a manner that is injurious to the public or that violates any provision of the act and may make a refund or restitution to a borrower or other person who is damaged as a result of a violation. The Director may also require a licensee to refund all fees received through any violation of the act.

The Director must have free access to the offices and places of business, books, accounts, papers, documents, and other information during normal business hours, and may require the production of such documents.

The Agreements entered into under this act are exempt from the usury limitations under RCW 19.52.

Substitute Bill Compared to Original Bill:

The term "borrower" is changed to "individual" to clarify that the Agreement is not a loan. The definition of a "licensee" includes a person who is required to be licensed but fails to obtain a license. Any buyer of an Agreement must either be licensed or have a servicer that is licensed. Licensed Originators must maintain a valid, unique identifier issued by the NMLSR. Any income agreement issued by an unlicensed Originator is unenforceable in Washington. Annual notice must be provided to individuals regarding any increase in the threshold exemption amounts for Agreements. Any Agreement that exceeds the maximum permissible percentage of future income is unenforceable. The Director has the authority to condition Originator licenses, in addition to suspending, revoking, and denying them. The Director also has the authority to require an Originator to refund all fees received through any violation of the provisions of this act. The Director has the authority to require the production of books and documents by directive, in addition to its subpoena power.

Appropriation: None.

Fiscal Note: Available.

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) Student loans are a growing burden for Americans. The Legislature must come up with alternatives. There have been other proposals under a "pay it forward" model, where Washington would foot the bill and students would pay back loans on the basis of their income. An Agreement under this bill takes this model into the private sector. This proposal is modeled on federal legislation currently in Congress. An investor, for example, could put money into a computer science degree. It is important to get the private sector involved in solving some of the economic problems that face us, and this is an important discussion to have. These Agreements should have a place in the landscape of options for financing higher education. Students sell a share of the future investment of their earnings. This is sharing some of the risk with private capital, and the students would be insulated from some of the risk. A high earning degree might correlate to a lower interest rate.

(Opposed) None.

Persons Testifying: Representative Zeiger, prime sponsor; and Isaac Kastama, Washington Business Alliance.

Persons Signed In To Testify But Not Testifying: None.