SENATE BILL REPORT
SB 5968

As Reported by Senate Committee On:
Business, Financial Services, Gaming & Trade, January 25, 2024

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: Senators Stanford, Dhingra, Frame, Hasegawa, Kuderer, Saldaña, Trudeau, Valdez and Wilson, C..

Brief History:

Committee Activity: Business, Financial Services, Gaming & Trade: 1/11/24, 1/25/24 [DPS, DNP].

Brief Summary of First Substitute Bill

- Establishes the regulation of home equity sharing agreements under the Consumer Loan Act.
- Establishes certain protections for borrowers.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES, GAMING & TRADE

Majority Report: That Substitute Senate Bill No. 5968 be substituted therefor, and the substitute bill do pass.

Signed by Senators Stanford, Chair; Frame, Vice Chair; Hasegawa, Lovick and Mullet.

Minority Report: Do not pass.

Signed by Senators Dozier, Ranking Member; Boehnke, Gildon and MacEwen.

Staff: Clint McCarthy (786-7319)

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.

Background: Financial Tools to Access Home Equity. Homeowners have a number of options for accessing equity in their homes.

Home Equity Loans. This product allows a borrower to receive a lump sum equity draw in exchange for repaying the principle at a fixed interest rate. These loans are commonly referred to as second liens or second mortgages. Under current federal tax law, home equity loan interest is tax deductible through 2026. Certain fees and credit checks are needed for approval from a lender.

Cash-out Refinance. This is a similar product to a home equity loan, but it refinances the entire value of the mortgage in addition to the amount of equity a borrower wants to take out of their home. A cash-out refinance requires certain fees and credit checks for approval from a lender. The interest on repayments may be tax deductible. The additional proceeds from a cash-out refinance are not taxable.

Home Equity Line of Credit. A home equity line of credit (HELOC) provides a borrower a line of credit. Rather than having to take a lump sum, as one does in a home equity loan or a cash-out refinance, a HELOC allows a borrower to pay interest on the amount of home equity they draw. This financial product has a variable interest rate which can increase or decrease a borrower's payment. Subject to certain limits, HELOC interest may be tax deductible.

Home Equity Sharing Agreements. Home equity sharing agreements (HESA) are financial arrangements between a homeowner and an investor to share ownership and appreciation of a property. Typically, an investor provides funds for a share of a property's value and both parties agree on how to distribute proceeds when a property is either sold or refinanced. During the establishment of a HESA, the borrower is required to pay for certain costs including, but not limited to:

- an appraisal;
- origination fee;
- costs associated with title and escrow;
- title insurance;
- state taxes; and
- notary and recording fees.

HESAs are not currently covered under the Washington Consumer Loan Act (CLA).

Summary of Bill (First Substitute): HESA are regulated as financial products under the Consumer Loan Act. HESA are subject to the provisions of the CLA. The term home equity sharing agreement is defined as any obligation in which an advance sum of money or other thing of value is extended to a borrower in exchange for an interest or future share of equity in the borrower's primary dwelling or a future obligation in the borrower's primary dwelling to pay a sum upon the occurrence of an agreed-upon event. The definition of the term residential mortgage loan is expanded to include HESA.

Licensees are permitted to make HESAs at a rate that does not exceed the equivalent of 20 percent per annum as determined by the simple interest method of calculating interest owed.

The violations section of the CLA is amended to add additional considerations specific for HESAs. Violations include:

- discounting the value of the borrower's primary dwelling by more than 2 percent when determining any term of the HESA;
- charging a prepayment penalty;
- preventing the property owner from renting or using the primary dwelling as the property owner chooses;
- using an appraisal or valuation that is not performed by an independent third party; and
- including provisions in the HESA that prevent the borrower from refinancing a mortgage or lien on the primary dwelling.

EFFECT OF CHANGES MADE BY BUSINESS, FINANCIAL SERVICES, GAMING & TRADE COMMITTEE (First Substitute):

- Clarified the definition of the term "Home Equity Sharing Agreement" to mean "any obligation in which an advance sum of money or other thing of value is extended to a borrower in exchange for an interest or future share of equity in the borrower's primary dwelling or a future obligation in the borrower's primary dwelling to pay a sum of upon the occurrence of an agreed-upon event."
- Limits the rate at which HESAs can be established so that the rate does not exceed 20 percent per annum as determined by the simple interest method of calculating interest owed.
- Removed prohibitions from HESA being used as a lien against residential property, running with the title of properties, preventing the owner from renting the property as they choose. Removed a limitation on the total amount due under a HESA.
- Provides additional violations of the CLA that are specific to Home Equity Sharing Agreements. Violations include:
    1. discounting the value of the borrower's primary dwelling by more than 2 percent when determining any term of the HESA;
    2. charging a prepayment penalty;
    3. preventing the property owner from renting or using the primary dwelling as the property owner chooses;
    4. using an appraisal or valuation that is not performed by an independent third party; and
    5. including provisions in the HESA that prevent the borrower from refinancing a mortgage or lien on the primary dwelling.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This regulates home equity agreements or home equity stealing agreements. People need to be protected. These need to be treated as loans so homeowners have greater protections. These schemes can result in bankruptcy or foreclosure. These need to be regulated like mortgages. These companies purchase an outsized ownership stake in these homes for the small amount of money that they provide up front. This arrangement forces one to sell their home. Homeowners need to be made more aware of the ramifications of using this product. They are are lengthy, convoluted, and confusing. One of the most common issuers of this product calls this a debt free solution when in fact it creates very expensive debt. These agreements need to be transparent and understandable. We need to make sure that the definition isn't too broad and have unintended consequences for the traditional home lending market. These are equity taking agreements- they are subprime mortgages by another name. We want to subject them to similar rules and regulations that we subject mortgages to. These agreements pose a threat to senior citizens and low income home owners. A homeowner almost always has to pay way more than they would through a home equity loan. This is not a safe alternative to a reverse mortgage. This is acid based lending.

CON: We welcome greater regulation. However, categorizing these products as loans don't recognize all the characteristics of the product. Unlike loans, these arrangements are really varied. There is support for the first section of the bill. The third section is the source of apprehension. This section feels punitive. It should be deleted in its entirety. Regulated appropriately, home equity sharing agreements can be transformative. This bill goes much further than what we've seen in other states. This will eliminate these products in Washington State. We need to be able to have a lien against the property for these agreements to go forward. For a number of people, they can't qualify for a loan when they have bad credit. You are taking away a good product for people with bad credit. Our goal is to get to an effective regulatory structure for the state. Millions of Americans cannot access their equity from the mortgage industry. We can say yes when the mortgage industry says no. We have to be able to place a lien on the property. We aren't opposed to a cap, the way the cap is constructed in the bill is not appropriate. Every mortgage in America has a lien on it. Regulation is only good for the industry as it matures. By having debt and equity financing, you can help a lot of people. We urge restraint and caution. Please work with the Department of Financial Institutions on regulating this bill. It is important and necessary to regulate this industry. There needs to be a market analysis to understand how this product serves Washingtonians. Nothing occurs in a vacuum and there is a housing crisis. This allows people to tap into their largest source of wealth without taking on more payments.

OTHER: Section 3 will cause the cessation of issuing these agreements in Washington State. We have empathy for people who are having issues with these agreements, however one of the stories shared

Persons Testifying: PRO: Senator Derek Stanford, Prime Sponsor; Andrew Pizor, National Consumer Law Center; Malena Pinkham, Northwest Justice Project; Emily Murphy, Northwest Consumer Law Center; Blythe Chandler, Terrell Marshall Law Group; Mary Veneziani; Shaun Scott; Riley Benge, Washington REALTORS.

CON: Deepak Kumar, Splitero Inc.; Joshua Gaffney, Hometap Equity Partners, LLC; Robert McLeod; Isaac Kastama, Unlock; Jim Riccitelli, Unlock; Jim Milano, McGlinchey PLLC; Rolando Villanueva; ROBERT MCKENNA, On behalf of Point Digital Finance, Inc..

OTHER: Matthew Windsor, Point Digital Finance, Inc.; John Arens, Redwood Trust; Ryan Downs, Real Estate Equity Exchange, Inc., d/b/a Unison; Laszlo Ladi, Real Estate Equity Exchange, Inc., d/b/a Unison; Thomas Sponholtz, Real Estate Equity Exchange, Inc., d/b/a Unison; Rowland Thompson, Unison Equity.

Persons Signed In To Testify But Not Testifying: No one.