

SENATE BILL REPORT

SB 6025

As Reported by Senate Committee On:
Business, Financial Services, Gaming & Trade, January 30, 2024

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

Brief Description: Protecting consumers from predatory loans.

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

Brief History:

Committee Activity: Business, Financial Services, Gaming & Trade: 1/16/24, 1/30/24 [DPS, w/oRec].

Brief Summary of First Substitute Bill

- Makes any attempt to evade the provisions of the Consumer Loan Act a violation of the act.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES, GAMING & TRADE

Majority Report: That Substitute Senate Bill No. 6025 be substituted therefor, and the substitute bill do pass.

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

Minority Report: That it be referred without recommendation.

Signed by Senators Boehnke, Gildon and MacEwen.

Staff: Clint McCarthy (786-7319)

Background: The Consumer Loan Act. The Consumer Loan Act (CLA) regulates consumer loans in Washington by providing various requirements for lenders and

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.

protections for borrowers. The CLA authorizes the Department of Financial Institutions to regulate consumer loan companies doing business in Washington. The CLA is applicable to each loan made to a resident of Washington by a licensee.

The Definition of a Loan. Under the CLA, the term loan is currently defined as a sum of money lent at interest or for a fee or other charges and includes both open-end and closed-end loan transactions.

Applicability of the Consumer Loan Act. The CLA is applicable to each loan made to a resident of Washington by a licensee and subject to its authority and restrictions. There are a number of entities exempt from the CLA, some of which include:

- pawnbrokers;
- retail installment sales of goods and services;
- check cashers or sellers; and
- various federal government loan programs.

Violations of the Consumer Loan Act. The CLA has a number of violations listed in statute. Some of which include:

- employing a scheme to defraud or mislead any lender or person;
- obtain property by fraud or misrepresentation;
- engage in any unfair or deceptive practice towards any person;
- soliciting or entering into a contract where a borrower has to pay a fee or commission when the borrower does not obtain a loan;
- soliciting rates, points, or finance terms that are not available at the time of advertisement; and
- failing to make disclosures to loan applicants as required.

Engaging in any device, subterfuge, or pretense to evade the requirements of the CLA in order to circumvent CLA requirements is not explicitly referenced as a violation of the CLA.

Summary of Bill (First Substitute): Anti-Evasion Provisions in the Consumer Loan Act. Individuals attempting to evade the requirements of the CLA through any device, subterfuge, or pretense to make, offer, or assist a borrower obtain a loan with a greater rate of interest, consideration, or charge is in violation of the CLA.

If a loan exceeds the rate permitted under the CLA, an entity making a loan is subject to the requirements of the CLA even if that entity is acting as an agent, service provider, or in a different capacity.

Loans that exceed the permitted rate under the CLA are subject to the CLA if the entity making the loan has the predominant economic interest in the loan or if the totality of circumstances indicate that the entity is a lender making a transaction that is structured to evade the requirements of the CLA.

The CLA does not apply to entities that extend money or credit to another person while representing that individual in a legal proceeding where the entity stands to receive a portion of an award or settlement from the legal action. The exemption does not apply to any entity that requires repayment in the event the person does not prevail in their civil proceeding.

Entities that make a loan in the state of Washington without a license that is not a residential mortgage loan is null, void, uncollectable, and unenforceable.

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

The current law definition of the term "loan" in the CLA is restored.

The CLA is applicable to loans made to both a resident or a person physically located in this state. The CLA not applicable to persons that extend money to another person on a nonrecourse basis in exchange for a contingent right to receive an amount of proceeds from a legal proceeding.

The CLA does not apply to entities that extend money or credit to another person while representing that individual in a legal proceeding where the entity stands to receive a portion of an award or settlement from the legal action. The exemption does not apply to any entity that requires repayment in the event the person does not prevail in their civil proceeding.

Appropriation: None.

Fiscal Note: Requested on January 30, 2024.

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 (Business, Financial Services, Gaming & Trade): *The committee recommended a different version of the bill than what was heard.* PRO: The definition of a loan needs to keep up with new lending products that are being created by fintech companies. There are entities using various schemes to evade regulation under Washington's consumer loan laws. Utah has no usury limits, and these fintech companies are using these banks to offer high interest loans. This act will protect our most vulnerable population. The interest rates on some of these unregulated products can ultimately add up to well over 100 percent. These entities need to be regulated and play by the same rules that other entities do. Earned Wage Access (EWA) companies share fundamental similarities with payday products. This bill does not prevent EWA's from

existing in Washington- it just makes them subject to regulation.

CON: We are an earned wage access company. We do payday advances for low fees. These aren't loans because they have a legal right to this money. Earned Wage Access is a high quality alternative to a loan. 30 percent of consumers in Washington State have difficulty accessing the banking system. In Illinois, many people's financial well-being got worse after the bill that SB 6025 is modeled after passed. This definition of loan will reduce access to credit, rather than promote it.

OTHER: This can help manage employee finances. Placing restrictions on EWA companies is problematic. Legislation should legitimize this benefit and be focused in on how EWA's work. EWA products are not a loan- they make earned but not paid wages available to our customers. Earned Wage Access is not a loan. This would adversely impact the hundreds of Washington employers that offer EWA to their employees. Some states are passing EWA specific legislation. We are in support of regulation, but we want one that is in line with how EWA's work. More than 250,000 employees in Washington have used EWA products. EWA's don't charge interest or late fees. The risk is only on the employer not making payroll. There are ways we can work together, but we have concerns about EWA products being included in the definition of loan. EWAs prevent consumers from taking out high interest loans.

Persons Testifying: PRO: Senator Derek Stanford, Prime Sponsor; Lauren Saunders; Sam Leonard, Northwest Consumer Law Center; Julia Kellison.

CON: Matt Pierce, Immediate; Joe Rubin, Opportunity Financial; Phil Goldfeder, American Fintech Council.

OTHER: Alice Jacobsohn, PayrollOrg; Brian Tate, Innovative Payments Association; Drew Bouton, Washington State Department of Financial Institutions; Ali Higgs, Washington State Department of Financial Institutions; Molly Jones, Payactiv; Ryan Naples, DailyPay; Angelena Bradfield.

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