
**SENATE COMMITTEE ON
BANKING AND FINANCIAL INSTITUTIONS**
Senator Steven Bradford, Chair
2019 - 2020 Regular

Bill No: AB 376 **Hearing Date:** June 19, 2019
Author: Mark Stone
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Consultant: Eileen Newhall

Subject: Student loan servicing.

SUMMARY This bill imposes new requirements on student loan servicers doing business in this state and places responsibility with the Department of Business Oversight (DBO) for administering these requirements; provides judicial enforcement mechanisms for violations of the aforementioned requirements by student loan servicers; requires DBO to collect information about and report on the activities of student loan servicers in this state; and requires DBO to designate a Student Borrower Advocate, as specified.

EXISTING LAW

- 1) Provides for the Student Loan Servicing Act (SLSA; Division 12.5 of the Financial Code, Financial Code Section 28100 et seq.), administered by the Department of Business Oversight (DBO) The SLSA prohibits any person from engaging in student loan servicing in this state, as defined, without first obtaining a license pursuant to Division 12.5, but does not apply to any of the following (Financial Code Section 28102):
 - a) State- or federally-chartered depository institutions or industrial loan companies.
 - b) A public postsecondary educational institution (e.g., University of California) or a private nonprofit postsecondary educational institution (e.g., Stanford University) servicing a student loan it extended to a borrower.
 - c) A nonprofit community service organization, as specified (generally speaking, nonprofits that engage in credit counseling, debt settlement, or debt management activities on behalf of consumers at no or very low cost; see Financial Code Section 12104).
 - d) A state or nonprofit private institution or organization that has an agreement with the United States Secretary of Education, as specified, in connection with its responsibilities as a guaranty agency engaged in default aversion.
 - e) A debt collector, as defined, whose student loan debt collection business involves collecting or attempting to collect on defaulted student loans, as defined.
- 2) Imposes a series of requirements on licensed student loan servicers and prohibited acts in which student loan servicers may not engage, the most substantive of which

include the following:

- a) Licensees must provide, free of charge on their internet web site, information or links to information regarding repayment and loan forgiveness options that may be available to those borrowers and provide this information or these links to borrowers in writing at least once per calendar year (Financial Code Section 28130(f)).
- b) Licensees must respond to a qualified written request, as defined, by acknowledging written receipt within 10 business days and provide information relating to the request and, if applicable, the action the licensee will take to correct the account within 30 business days (Financial Code Section 28130(g)).
- c) After receiving a qualified written request from a borrower related to a dispute over a borrower's payment, a licensee may not furnish adverse information to any consumer reporting agency for 60 days regarding any payment that is the subject of the qualified written request (Financial Code Section 28130(g)).
- d) Licensees must ask borrowers how to apply overpayments, as defined, on outstanding student loans, except as provided in federal law or required by a student loan servicing agreement (Financial Code Section 28130(h)).
- e) When a sale, assignment, or other transfer of the servicing in a student loan results in a change in the identity of the party to whom the borrower is required to send payments or direct communications, licensees must notify borrowers in writing at least 15 days before the payment is due to the new party, providing specified relevant information about the loan and the new servicer, and must transfer all information regarding a borrower, that borrower's account, and that borrower's student loan to the new licensee servicing the student loan within 45 calendar days of the effective date of the sale, assignment, or transfer (Financial Code Section 28134).
- f) Licensees must also retain records of servicing a borrower's student loan for a minimum of three years after the student loan is sold, assigned, transferred, or paid in full, except where prohibited by federal law (Financial Code Section 28138).
- g) Licensees are prohibited from defrauding or misleading a borrower, engaging in any unfair or deceptive practice toward any borrower, misapplying payments made by a borrower, failing to accurately report each borrower's payment performance to at least one nationwide consumer reporting agency, refusing to communicate with an authorized representative of the borrower, or making any false statement or omitting any material fact in connection with any information or reports submitted to DBO or another governmental agency (Financial Code Section 28136).

THIS BILL

- 1) Contains findings and declarations regarding the challenges of student loan debtors, the predatory practices of some student loan servicers, failure of the federal

government to take necessary action to halt widespread abuses, and the resulting need for California to take steps to do all of the following: promote meaningful access to affordable repayment and loan forgiveness benefits; ensure that California borrowers can rely on information provided to them by their student loan servicers; and build on California's SLSA to protect California borrowers from predatory student loan industry practices.

- 2) Defines the terms "borrower," "commissioner," "department," "engage in the business," "in this state," "student loan," and "student loan servicer" as those terms are defined in the SLSA and adds a new definition for the term "qualified request," which is defined as any inbound inquiry or complaint to a student loan servicer that cannot be completed in a single phone call.
- 3) Prohibits any person from engaging in abusive acts or practices when servicing a student loan in this state. Provides that an abusive act or practice in connection with the servicing of a student loan includes, but is not limited to one that:
 - a) Materially interferes with a borrower's ability to understand a term or condition of a student loan.
 - b) Takes unreasonable advantage of any of the following:
 - i) A borrower's lack of understanding of the material risks, costs, or conditions of the student loan.
 - ii) A borrower's inability to protect his or her interests in selecting or using a student loan or a feature, term, or condition of a student loan.
 - iii) A borrower's reasonable reliance on a student loan servicer to act in the interests of the borrower.
- 4) Prohibits any person from engaging in any unfair or deceptive practice toward any military borrower, borrower working in public service, or borrower with disabilities, or from misrepresenting or omitting any material information in connection with the servicing of a student loan owed by a military borrower, borrower working in public service, or a borrower with disabilities. For purposes of these prohibitions, misrepresenting or omitting any material information is defined as misrepresenting or omitting any of the following:
 - a) The availability of any program or protection specific to or applicable to military borrowers, borrowers working in public service, or borrowers with disabilities.
 - b) The amount, nature, or terms of any fee or payment due or claimed to be due on a student loan.
 - c) The terms and conditions of the student loan agreement.
 - d) The borrower's obligations under the student loan.

- 5) Prohibits any person from engaging in any unfair or deceptive practice toward any older borrower or cosigner or misrepresenting or omitting any material information in connection with the servicing of a student loan owed or cosigned by an older borrower. For purposes of these prohibitions, misrepresenting or omitting any material information is defined as misrepresenting or omitting any of the following:
 - a) The availability of any program or protection specific to older borrowers or cosigners or applicable to older borrowers or cosigners.
 - b) The amount, nature, or terms of any fee or payment due or claimed to be due on a student loan.
 - c) The terms and conditions of the student loan agreement.
 - d) The borrower's or cosigner's obligations under the student loan.
- 6) Requires a person engaged in student loan servicing in this state to do all of the following, except to the extent that a requirement is inconsistent with any provision of federal law or regulation, and then only to the extent of the inconsistency:
 - a) Post, process, and credit student loan payments in a timely manner, as specified.
 - b) Apply an overpayment on a loan, as defined, in a manner that is in the best financial interest of a student borrower, unless a borrower provides instructions to the contrary, as specified.
 - c) Apply partial payments, as defined, in a manner that minimizes late fees and negative credit reporting, as specified.
 - d) Ensure that any late fee imposed on a borrower for a past due student loan payment is reasonable and proportional to the total costs incurred as a result of the late payment, and in no case exceeds 6% of the amount past due.
 - e) Diligently oversee its service providers, as specified.
 - f) Timely process its paperwork, consistent with existing federal requirements, as specified.
 - g) Maintain accurate records about borrowers' accounts and retain these records for the life of a student loan, as specified.
 - h) Treat any inbound inquiry or complaint that cannot be completed in a single phone call as a qualified request subject to the same requirements and protections established for qualified written requests under the SLSA.
 - i) Maintain policies and procedures permitting borrowers to escalate a complaint or inquiry to a senior representative if the borrower is dissatisfied with the outcome of the initial qualified request.

- j) Protect borrowers from any negative consequences that are related to the issue identified in a borrower's qualified request or qualified written request. For purposes of this requirement, negative consequences include, but are not limited to, negative credit reporting, lost eligibility for a borrower benefit, late fees, interest capitalization, or other financial injury.
 - k) Protect borrowers from any negative consequences stemming from a sale, assignment, or transfer of a student loan or from a system conversion. For purposes of this requirement, negative consequences include, but are not limited to, negative credit reporting, the imposition of late fees, or loss of or denial of eligibility for any benefit or protection established under federal law or included in a loan contract.
 - l) Ensure that all necessary information, as defined, regarding a borrower, a borrower's account, and a borrower's student loan accompanies a loan when it transfers to a new student loan servicer, as specified.
 - m) Provide specialized training for any customer service personnel that advise military borrowers, borrowers working in public service, older borrowers, or borrowers with disabilities about student loan repayment benefits and protections, as specified.
 - n) Respond within 15 calendar days to communications from the Student Borrower Advocate, or within a shorter, reasonable time as the Student Borrower Advocate may request in their communication.
 - o) Comply with specified provisions of the SLSA.
- 7) Requires a person engaged in student loan servicing to comply with the requirements of this bill and with all applicable federal laws relating to student loan servicing, as they are amended from time to time, and the regulations promulgated pursuant to those federal laws.
- 8) Provides that any consumer who suffers damage as a result of the failure of a person engaged in student loan servicing to comply with this bill, applicable federal law, or applicable federal regulations may bring an action on their own behalf and on behalf a similarly situated class of consumers to recover or obtain any of the following:
- a) Actual damages, although in no case may a total award of damages be less than \$500.
 - b) An order enjoining the methods, acts, or practices.
 - c) Restitution of property.
 - d) Punitive damages.
 - e) Attorney's fees.

- f) Any other relief the court deems proper.
- 9) Imposes joint and several liability on student loan servicers for the conduct of their third party service providers.
- 10) In addition to any other remedies described above or provided elsewhere in law, provides that whenever it is proven by a preponderance of the evidence that a person engaged in student loan servicing has engaged in conduct that substantially interferes with a borrower's right to an alternative payment arrangement, loan forgiveness, cancellation, or discharge, or any other financial benefit established under the terms of a borrower's promissory note or the Higher Education Act of 1965, as it is amended from time to time, and the regulations promulgated pursuant to that law, the court must award treble actual damages to the plaintiff. Provides that in no case may a total damage award be less than \$1,500 per plaintiff, per violation.
- 11) Requires the DBO to administer the provisions of this bill and to do all of the following:
- a) Monitor for risks to consumers in the provision of student loan servicing, including developments in the market for those services.
 - b) Not later than 180 days following the operative date of the bill, designate a Student Borrower Advocate within the department to receive and review complaints from student loan borrowers and provide timely assistance to student loan borrowers, as described in more detail below.
 - c) Not later than 180 days following the operative date of the bill, gather and compile information from persons engaged in student loan servicing to assemble data substantially similar to the data collection proposed in the "Student Loan Market Monitoring" initiative described by the federal Consumer Financial Protection Bureau in Federal Register No 171, Page 11440, dated September 6, 2017.
 - d) On a quarterly basis, develop and publicize metrics that identify each person engaged in student loan servicing and provide relevant metrics related to the performance of student loan servicing by each of these persons.
- 12) Requires the Student Borrower Advocate to do all of the following:
- a) Receive and review complaints from student loan borrowers and refer these complaints, as follows:
 - i) Complaints regarding a student loan servicer licensed under the SLSA must be referred to the appropriate unit within DBO.
 - ii) Complaints regarding a student loan servicer that is not subject to licensure under the SLSA must be referred to the California Department of Justice.
 - iii) Complaints regarding a private postsecondary educational institution licensed by the Bureau for Private Postsecondary Education must be referred to that

Bureau's Office of Student Assistance and Relief.

- b) Compile and analyze data on student loan borrower complaints received and referred to DBO and DOJ.
- c) Help student loan borrowers understand their rights and responsibilities under the terms of student loans.
- d) Provide information to the public, agencies, legislators, and others regarding the problems and concerns of student loan borrowers and make recommendations to resolve those problems and concerns.
- e) Analyze and monitor the development and implementation of federal, state, and local laws, rules, regulations, and policies relating to student loan borrowers and recommend any changes the advocate deems necessary.
- f) Assess the number of residents with federal student loans who have applied for, received, or are awaiting a decision on forgiveness or discharge of a student loan, as specified.
- g) Disseminate information about the availability of the Student Borrower Advocate to help student loan borrowers, potential student loan borrowers, institutions of higher education, student loan servicers, and any other participant in student loan lending with any student loan concerns.
- h) Take any action reasonably calculated or intended to assist student loan borrowers, including providing assistance applying for forgiveness or discharge of a student loan and communicating with a student loan servicer to resolve a complaint received by the advocate from a student loan borrower.
- i) Request and compile data provided by any student loan servicer if the advocate reasonably determines that data to be necessary to effectuate his or her duties. If the Student Borrower Advocate determines that it is necessary to compel the production of that data via examination or subpoena, DBO is required to coordinate with the Student Borrower Advocate to effectuate the production of the data.
- j) Submit a report, as specified, to the appropriate committees of the legislature having jurisdiction over higher education and financial institutions, as specified, not later than 18 months after enactment of the bill and at least once annually thereafter.

COMMENTS

- 1) Purpose: This bill is co-sponsored by the Student Borrower Protection Center, Next Gen California, Consumer Reports, Student Debt Crisis, and the Young Invincibles to improve student loan borrower outcomes. The bill is intended to build on California's existing SLSA and fill gaps that exist following the Trump Administration's decision to dismantle the student loan servicing oversight arm of the

CFPB.

- 2) The Author Will Offer Extensive Amendments: AB 376 is double-referred to this Committee and the Senate Judiciary Committee and is subject to the fiscal deadline. Because there was insufficient time to amend the bill before this Committee's policy hearing on the measure, amendments will be offered by the author in Committee to do all of the following:
 - a) Amend the SLSA (whose provisions are in the Financial Code) to delete substantive servicer requirements and prohibited acts. Amend the code sections that this bill adds to the Civil Code to incorporate the servicer requirements and prohibited acts previously contained in the SLSA. These changes have the effect of stripping the SLSA down to a licensing framework and ensuring that the substantive rules applicable to the act of servicing a student loan in this state are contained in the Civil Code.
 - b) Exempt guaranty agencies from the servicing requirements and enforcement provisions of the bill (but not from the requirement to respond to requests for information from the Student Borrower Advocate and DBO).
 - c) Add definitions for the terms "military borrower," "borrower engaged in public service," "older borrower," and "borrower with disabilities," and clarify/correct the definitions of "qualified request" and "qualified written request." Clarify that a qualified request must be treated in the same manner as a qualified written request.
 - d) Reorganize the Civil Code provisions to group prohibited acts together. As the bill is currently drafted, prohibited acts are spread throughout the Civil Code language and, in certain places, are lumped in with required acts, making it difficult to distinguish affirmative responsibilities from prohibitions.
 - e) Clarify that the minimum actual damages, which may be awarded by a court to a borrower following a lawsuit, equal \$500 *per plaintiff, per violation*.
 - f) Revise the rule, currently contained in the Financial Code but being moved to the Civil Code, which prohibits servicers from reporting any adverse information to a credit reporting agency for sixty days following receipt of a qualified written request from a borrower. Once revised, this provision will institute a 60-day pause on credit reporting by prohibiting servicers from reporting *any* information to a credit reporting agency about a payment that is the subject of a qualified written request.
- 3) Once the Bill is Amended, How Will All of This Work? California adopted the SLSA, effective July 1, 2018, joining a handful of other states and the District of Columbia in requiring entities that service federal or private student loans in this state to be licensed. California's SLSA, like the licensing laws of other jurisdictions, was an attempt to address extensive student loan borrower complaints about treatment by their student loan servicers and reports of systemic problems within the student loan servicing industry, which were documented in several reports issued by the CFPB.

This bill is intended to add to the required and prohibited actions contained in the SLSA, apply those expanded rules to a broader group of entities than those required to be licensed under the SLSA, enforce those expanded rules using a combination of DBO and AG oversight and private rights of action, place DBO in the role of Student Borrower Advocate, and institute market monitoring of the student loan servicing industry. Each of these components is discussed in more detail immediately below.

Add to the Rules Contained in the SLSA. One of the key provisions of AB 376 is its addition of an “abusive acts and practices” standard to California law. The “abusive practices” language of AB 376 mirrors federal protections contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank; Public Law 111-203). According to representatives of the Student Borrower Protection Center (SBPC), codifying the “abusive” standard in California law will preserve broad future enforcement authority for both the California Attorney General and DBO and allow individuals to hold industry directly accountable using the private right of action in this bill.

Other rules being added to California law by AB 376 represent an attempt to “fill the gaps” in borrower protection that remain following enactment of the SLSA. Per the SBPC, although the SLSA “included some limited new protections for borrowers, it did not offer the kind of comprehensive, transparent and enforceable standards in place in other regulated consumer financial markets” like the credit card and mortgage lending industries.

SBPC also believes that the new rules being added to California law will withstand pre-emption challenges. “In the past, state policymakers have been reluctant to set broad standards, in part, out of concern [that] preemption provisions in the Higher Education Act could render a state law inapplicable to the servicing of federal student loans, which are more than 90% of all outstanding loans. This view incorrectly treated the Higher Education Act as if it preempted all state regulation. However, the opposite is true --- aside from a single, narrow provision expressly preempting certain state ‘disclosure’ requirements, federal higher education law is silent as to the role of states when setting standards for the servicing of student loans.”

Apply the New Rules to a Broader Set of Entities Than Those Required to be Licensed under the SLSA. California’s SLSA includes several exemptions, some of which are mirrored in AB 376, and some of which are not. The most notable group exempt from the SLSA but subject to AB 376 includes state- and federally-chartered banks and credit unions.

Add A Private Right of Action and Allow DBO and the AG to Enforce Violations of Federal Law. This bill makes it a violation of state law for any person engaged in student loan servicing in this state to fail to comply with the requirements of AB 376 or to fail to comply with “all applicable federal laws relating to student loan servicing, as from time to time amended, and the regulations promulgated thereunder.” It gives DBO the right to enforce violations of AB 376 and the federal laws and regulations it incorporates by reference as violations of the SLSA.

This bill also authorizes any consumer who suffers damage due to the failure of an entity engaged in student loan servicing in this state to comply with the requirements of AB 376 or the federal laws and regulations it incorporates to bring an action on their own behalf and on behalf of a similarly situated class of consumers against the person who has committed the violation or violations giving rise to the damage.

According to the SBPC, “The Higher Education Act does not include a private right of action or any mechanism to permit state law enforcement officials or state regulators to enforce borrowers’ rights to a wide range of federal consumer protections and benefits...Recent actions by the Trump Administration have drastically reduced federal oversight and enforcement efforts on behalf of borrowers. For example, in August 2017, the U.S. Department of Education revoked information sharing agreements that once permitted the CFPB to supervise and handle consumer complaints about the largest student loan servicers. This action marked the start of a series of increasingly hostile moves by the Trump Administration, including the Education Department’s 2018 ‘reinterpretation’ of preemption under the HEA, the shuttering of CFPB’s Office for Students, and the widespread misuse of the federal Privacy Act to obstruct state oversight. California has the opportunity to provide borrowers with a first-of-its kind means to enforce their federal rights to affordable student loan payments and loan forgiveness and demand significant penalties from the student loan industry when these rights are violated.”

Establish a Student Borrower Advocate. This bill attempts to replicate on a state level what the CFPB used to offer at a federal level. The SBPC states, “Until 2018, the CFPB was the only agency in the federal government with a dedicated unit that could assist borrowers with both federal and private student loans. The Trump Administration shuttered this office, following action by the Department of Education to limit coordination between these agencies on student loan complaints...No state has provided a borrower advocate with the resources, legal tools, and independence necessary to replicate the successful model built by the CFPB.” AB 376 gives the Student Borrower Advocate (a position within DBO) authority to refer suspected violations of law to the AG and DBO; compile and analyze borrower complaints; and make independent recommendations to the Governor, the AG, and the Legislature.

Institute Market Monitoring. This provision places DBO into a role that the CFPB tried to fill, but was unable to before the Trump Administration prevented the Bureau from moving forward. In 2017, the CFPB issued a proposal to enact a “Student Loan Market Monitoring” initiative (Federal Register No 171, Page 11440, September 6, 2017). According to the SBPC, “By requiring student loan companies to compile and produce summary data about their performance, California will be able to develop a ‘report card’ for the student loan industry – identifying the companies and practices that are failing borrowers and informing state and federal policymakers seeking to drive reforms across the student loan market.”

- 4) Student Loan Servicing Practices and New State Laws Have Prompted Extensive Litigation But Settled Few Questions: The question of whether and to what extent states may regulate the activities of entities that service federal student loans is one that has been considered by many courts of law. Litigation over this issue intensified following states’ decisions to enact student loan servicing licensing laws applicable federal and private student loan servicers. The courts have also presided over

extensive litigation regarding what duties student loan servicers have to the borrowers whose loans they service. To date, courts' rulings have been mixed. None of the cases that could inform the Legislature regarding the extent to which the provisions of AB 376 will hold up to legal challenge have been fully settled.

- 5) This Bill Is Likely to Add to the Litigation: At a minimum, this bill's private right of action is likely to generate both individual and class action litigation against student loan servicers alleged to have violated the new rules being added by AB 376 or federal law, or both. However, the provisions of this bill also provide ample fodder for servicers subject to its provisions to file suit against the state, seeking to invalidate certain provisions of the bill. For example, federally-regulated banks allege that this bill contains provisions which are pre-empted under the National Bank Act (see Opposition arguments, below). Banks could wait to be sued and raise these arguments when defending plaintiffs' lawsuits, or they could strike first and bring an action against the state, seeking to invalidate those portions of the bill they believe are pre-empted, to discourage future plaintiffs' suits against them.

This bill also applies several of its requirements, "except to the extent that a requirement is inconsistent with any provision of federal law or regulation, and then only to the extent of the inconsistency." Language of this sort is an invitation for regulators, plaintiffs' attorneys, and servicers to argue about where states' authority stops in the case of federal student loans and federally-regulated servicers.

This bill also includes at least one provision that has been directly challenged by student loan servicers in litigation brought against them by others. For example, this bill defines an abusive act or practice as, among other things, a servicer failing act in the interests of a borrower whose loan that servicer is servicing. The question of whether a servicer has an affirmative duty to act in the best interests of borrowers is an unsettled matter of law, which is currently being litigated as part of lawsuits brought against Navient by both the CFPB and California's AG. AB 376 takes the view that this unsettled matter of law will be decided in favor of the CFPB and California AG. If it is not, DBO will be required to enforce this provision, until an appellate court strikes it down.

- 6) Support:

- a) The Student Borrower Protection Center (SBPC), one of this bill's sponsors, is a nonprofit organization founded by former senior regulators at the federal Consumer Financial Protection Bureau. "Our team led the first government-wide effort at the federal level to halt abuses by the student loan industry and create new consumer protections to ensure 44 million Americans with student debt were no longer preyed upon by an industry looking to get rich off of our nation's student debt crisis. However, the Trump Administration and Betsy DeVos have rolled back much of this progress, siding with the largest student loan companies over the rights of student borrowers....AB 376 picks up where past federal efforts to reform the student loan system have fallen short."
- b) An extensive coalition of consumer advocacy and legal aid organizations, student associations, and organized labor writes, "This bill would make California the first state in the nation to create a comprehensive set of rights for people holding

student debt, by requiring student loan companies to treat borrowers fairly and giving borrowers the right to hold these companies accountable when they fail to meet basic servicing standards...Unlike mortgages or credit cards, there is not industry-wide framework at the federal level to regulate the student loan industry...AB 376 would create enforceable industry-wide standards for loan servicing companies. The bill would: ban “abusive” student loan servicing practices that take unreasonable advantage of borrowers’ confusion over loan repayment options; create minimum servicing standards related to application of payments, paperwork retention and specialized staff training; establish a Student Borrower Advocate within the Department of Business Oversight (DBO) responsible for reviewing complaints, gathering data and coordinating with related state agencies; and grant DBO additional “market monitoring” authorities, to better collect data about the student loan servicing industry.”

7) Opposition:

- a) The Student Loan Servicing Alliance is a trade association whose members service about 95% of all outstanding federal and private student loans. The trade association is seeking three sets of amendments, which, if taken by the author, would remove the association’s opposition. Those amendments include striking the private right of action, striking the market monitoring requirements this bill imposes on the Student Borrower Advocate and DBO, and modifying the provisions of the bill that require servicers to credit borrower payments in a manner that is “in the best interest of the borrower.” The association would prefer to require servicers to disclose their payment allocation methodologies to borrowers and allow borrowers to provide custom directions if they prefer a different desired allocation that is permissible within the servicing contract or law.
- b) The Civil Justice Association of California also seeks to see this bill’s private right of action removed. “Chapter 3, Section 1788.103(b) allows an individual lawsuit on behalf of themselves ‘and on behalf of a similarly situated class of consumers’ which creates a statutory minimum amount of damages of \$500. This representative action feature, a quasi-class action, would allow one person to represent others without having to fulfill the requirements of a class action lawsuit. Although California has some of the most liberal class action lawsuit requirements in the country (see *William R. Shafon, California’s Uncommon Common Law Class Action Litigation*, 41 *Loy. L.A.L. Rev* 783 (2008), California does impose some limits on class certification....This bill would allow a borrower to sue on behalf of others similarly situated, without any of the traditional requirements of a representative action.”
- c) The Consumer Bankers Association, California Bankers Association, and California Credit Union League believe that the exemption for state- and federally-chartered banks and credit unions that is contained in the SLSA should be added to the Civil Code provisions of AB 376 and that the requirements of AB 376 should be applied only to those entities required to be licensed under the SLSA. If AB 376 is applied to banks, the Consumer Bankers Association argues that the bill would create insurmountable conflicts for federally regulated financial institutions. “Several provisions of the bill would place State of California representatives, including the Student Borrower Advocate, in the position of

exercising ‘visitorial powers’ over banks in violation of federal law...Any requirement in the bill that would give the State the right to investigate the student loan operations of a National Bank, and/or examine or require the production of the books, accounts, records, and files of a National Bank that services student loans, constitutes an impermissible exercise of visitorial authority...Likewise, any requirement that banks must submit reports (annual or otherwise) or produce proprietary business data or written complaint responses would violate national bank preemption principles that give exclusive visitorial authority (e.g., the right to audit, inspect, examine and supervise the operations and books/records of a national bank) to the federal prudential regulators.”

8) Amendments: See “Comments Number 2,” above.

9) Prior and Related Legislation:

- a) AB 2251 (Stone), Chapter 824, Statutes of 2016, enacted the SLSA, operative July 1, 2018, which requires persons servicing student loans in this state, as defined, to become licensed by DBO, comply with specified requirements, and refrain from engaging in specified prohibited acts.
- b) AB 38 (Stone), Chapter 379, Statutes of 2018 was a clean-up bill to AB 2251, which made several technical changes and added exemptions from the SLSA for guaranty agencies and debt collectors, as specified.

LIST OF REGISTERED SUPPORT/OPPOSITION

Support

NexGen California (co-sponsor)
 Consumer Reports (co-sponsor)
 Student Borrower Protection Center (co-sponsor)
 Student Debt Crisis (co-sponsor)
 Young Invincibles (co-sponsor)
 American Federation of State, County and Municipal Employees, AFL-CIO
 Americans for Financial Reform
 Asian Americans Advancing Justice
 Association of Young Americans
 Attorney General Xavier Becerra
 Beneficial State Foundation
 California Asset Building Coalition
 California Association of Nonprofits
 California Association of Realtors
 California Federation of Teachers
 California Low-Income Consumer Coalition
 California LULAC
 California Women’s Law Center
 Californians for Economic Justice
 CalPIRG
 City and County of San Francisco

Coalition for Humane Immigrant Rights
Common Sense Kids Action
Consumer Action
Consumer Attorneys of California
Consumer Federation of California
County Welfare Directors Association of California
Courage Campaign
East Bay Community Law Center
Friends Committee on Legislation of California
Generation Progress
Housing & Economic Rights Advocates
National Student Loan Defense Network
New Economics for Women
Public Law Center
San Francisco Treasurer & Tax Collector Jose Cisneros
Service Employees International Union
Student Senate for California Community Colleges
The Institute for College Access & Success
UnidosUS
University of California Student Association

Opposition

California Bankers Association
California Credit Union League
Civil Justice Association of California
Consumer Bankers Association
Student Loan Servicing Alliance

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