
THIRD READING

Bill No: AB 376
Author: Mark Stone (D), et al.
Amended: 8/20/20 in Senate
Vote: 21

SENATE BANKING & F.I. COMMITTEE: 4-1, 6/19/19
AYES: Bradford, Durazo, Hueso, Portantino
NOES: Dahle
NO VOTE RECORDED: Chang, Caballero

SENATE JUDICIARY COMMITTEE: 7-1, 7/9/19
AYES: Jackson, Durazo, Lena Gonzalez, Monning, Stern, Umberg, Wieckowski
NOES: Jones
NO VOTE RECORDED: Borgeas

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/20/20
AYES: Portantino, Bradford, Hill, Leyva, Wieckowski
NOES: Bates, Jones

ASSEMBLY FLOOR: 59-15, 5/28/19 - See last page for vote

SUBJECT: Student loan servicing

SOURCE: California Federation of Teachers
Consumer Reports
NexGen California
Student Borrower Protection Center
Student Debt Crisis
Young Invincibles

DIGEST: 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 Loan Ombudsman, as specified.

ANALYSIS:

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 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, as specified.

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) Moves several definitions and virtually all substantive provisions contained in the SLSA out of the Financial Code and into the Civil Code.
- 3) Defines the term "student loan servicer" in a broader manner than this term is defined in the SLSA. For purposes of this bill, "student loan servicer" means any person engaged in the business of servicing student loans in this state, but while the SLSA contains exemptions for debt collectors, guaranty agencies, depository institutions, certain postsecondary educational institutions, and certain nonprofit community service organizations, as defined, this bill exempts only federally-chartered credit unions, debt collectors, and guaranty agencies from its requirements.
- 4) Defines term "qualified request" as any inbound telephone call made by a borrower to a student loan servicer, in which the borrower either requests specific information from the student loan servicer or reports what the borrower believes to be an error regarding the borrower's account, and which cannot be resolved in a single phone call. Also adds definitions for the terms "military borrower," "borrower working in public service," "older borrower," and "borrower with disabilities."
- 5) Prohibits any person from engaging in abusive acts or practices when servicing a student loan in this state, as specified.
- 6) Prohibits a student loan servicer from employing a scheme, device, or artifice to defraud or mislead a borrower; engage in an unfair or deceptive practice toward a borrower, as specified; misrepresent or omit material information in connection with the servicing of a student loan; misapply payments made by a borrower to the outstanding balance of a student loan; fail to accurately report each borrower's payment performance to at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as specified; refuse to communicate with an authorized representative of the

borrower who provides a written authorization signed by the borrower, as specified; or negligently or intentionally make a false statement or knowingly and willfully make an omission of a material fact in connection with information or reports filed with DBO or another government agency.

- 7) 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 and process student loan payments in a timely manner, as specified.
 - b) Inquire of a borrower how to apply an overpayment to a student loan. Follow the borrower's wishes regarding overpayments, if the borrower provides direction, or apply any overpayment in a manner that is in the best financial interest of the borrowers, as defined, if the borrower does not provide direction.
 - c) Apply a partial payment, as defined, in a manner that minimizes late fees and negative credit reporting, unless a borrower provides alternate instructions, 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 records about a borrower's account and retain these records while the servicer services the loan and for a minimum of three years after the loan has been paid in full, assigned to collection, or transferred to a different servicer.
 - h) Treat a qualified request in the same manner as a qualified written request.
 - i) Maintain policies and procedures permitting a borrower who is dissatisfied with the outcome of an initial qualified request to escalate the borrower's concern to a supervisor.

- j) Protect borrowers from any negative consequences, as defined, which are directly related to an issue identified in a borrower's qualified request or qualified written request, until that request has been resolved.
Notwithstanding this requirement, servicers are prohibited from furnishing information to a consumer reporting agency for 60 days regarding a payment that is subject to a qualified request or qualified written request.
 - k) Protect borrowers from any negative consequences, as defined, stemming from a sale, assignment, transfer of a student loan, system conversion, or any payment made by a borrower to an original student loan servicer consistent with the original student loan servicer's policy.
 - l) Notify a borrower in writing at least 15 days before the borrower is required to send payments to a new student loan servicer, if the sale, assignment, or other transfer of the borrower's student loan results in a change in the identity of the party to whom the borrower is required to send payments or direct communications regarding their student loan.
 - m) 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 within 45 calendar days of the effective date of the sale, assignment, or transfer of the student loan, as specified.
 - n) 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.
 - o) Respond within 10 business days to communications from the Student Loan Ombudsman, or within a shorter, reasonable time as the Student Loan Ombudsman may request in their communication.
 - p) Respond to a qualified written request by acknowledging receipt of the request within 10 business days, and provide additional information, as specified and if applicable, within 30 business days, regarding action the servicer will take related to the request.
- 8) Requires student loan servicers 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, and requires DBO to administer this bill.

- 9) Imposes joint and several liability on student loan servicers for the conduct of their third party service providers.
- 10) 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: actual damages of at least \$500 per plaintiff, per violation; an order enjoining the methods, acts, or practices; restitution of property; punitive damages; attorney's fees; any other relief the court deems proper.
- 11) Provides that, in addition to any other remedies described above or provided elsewhere in law, whenever it is proven by a preponderance of the evidence that a student loan servicer 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, as specified, 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.
- 12) Provides servicers with a right to cure alleged violations before an action for damages may be brought against them. The right to cure applicable to actions for damages is as follows:
 - a) At least 45 days before a consumer may bring an action for damages or injunctive relief, the consumer must provide written notice, as specified, to the person alleged to have engaged in the violations regarding the nature of the alleged violations and demand that the person correct and remedy the method, acts, or practices that are the subject of the notice.
 - b) An action for damages brought by a consumer on his or her own behalf may not be maintained, if the person who is issued the demand provides the consumer with an appropriate correction and remedy within 30 days after receiving written notice of the violation or agrees, within 30 days after receiving written notice of the violation, to provide the consumer with an appropriate correction and remedy within a reasonable time.
 - c) An action for damages brought by a consumer on the consumer's behalf and on behalf of a similarly situated class of consumers may not be maintained, if the person who is issued the demand shows that all of the following are true:

- i) All similarly situated consumers have been identified, or a reasonable effort to identify those consumers has been made.
 - ii) All identified consumers have been notified that, upon their request, the person alleged to have engaged in the violation(s) will make the appropriate correction and remedy.
 - iii) The correction and remedy requested by the consumers has been or will be given in a reasonable time.
 - iv) The person who is issued the demand has ceased engaging in or will cease engaging in the violation(s) within a reasonable time.
- 13) Provides that, notwithstanding the remedies in 10) and 11) above and the right to cure described in 12) above, an award of damages may not be given in connection with a violation of this bill, applicable federal law, or applicable federal regulations, if the person alleged to have engaged in the violations does both of the following:
- a) Proves by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, despite the use of reasonable procedures adopted to avoid that error.
 - b) Makes an appropriate correction, repair, replacement, or other remedy, as specified.
- 14) Authorizes, effective July 1, 2021, and subject to enactment of a Budget Act appropriation, the Commissioner of DBO (commissioner) to monitor for risks to consumers in the provision of student loan servicing in this state, by compiling and analyzing data, as specified. Includes guaranty agencies within the definition of the term “student loan servicer” for purposes of this provision.
- 15) Requires, effective July 1, 2021, and subject to enactment of a Budget Act appropriation, the commissioner to designate a Student Loan Ombudsman within the department, with specified duties related to tracking, compiling, and analyzing student loan complaints; monitoring the development and implementation of federal and state laws and rules relating to student loan borrowers; and disseminating information about the ability of specified state and federal departments and agencies to accept complaints from student loan borrowers. Requires the Student Loan Ombudsman to submit an annual report to the Legislature, beginning January 1, 2023, regarding its activities. Includes guaranty agencies within the definition of the term “student loan servicer” for purposes of this provision.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, this bill will result in unknown, but likely significant ongoing costs to DBO (Financial Institutions Fund) and estimated costs of up to \$1 million to the Department of Justice's Consumer Protection Section for an increase in workload due to additional referrals from the Student Loan Ombudsman to investigate complaints and assist the Ombudsman in complying with specified reporting requirements (General Fund).

SUPPORT: (Verified 8/25/20)

California Federation of Teachers (co-source)

Consumer Reports (co-source)

NexGen California (co-source)

Student Borrower Protection Center (co-source)

Student Debt Crisis (co-source)

Young Invincibles (co-source)

Attorney General Xavier Becerra

Insurance Commissioner Ricardo Lara

Lieutenant Governor Eleni Kounalakis

Secretary of State Alex Padilla

AARP

American Federation of State, County and Municipal Employees, AFL-CIO

Americans for Financial Reform

Asian Americans Advancing Justice

Association of Young Americans

Beneficial State Foundation

Building the California Dream Alliance

California Asset Building Coalition

California Association of Nonprofits

California Association of Realtors

California Community Colleges Chancellor's Office

California Council of Community Behavior Health Agencies

California Dental Association

California Dream Network

California Economic Justice

California Immigrant Policy Center

California Labor Federation, AFL-CIO

California League of Conservation Voters

California Low-Income Consumer Coalition

California LULAC

California Optometric Association
California Professional Firefighters
California Reinvestment Coalition
California Student Aid Commission
California Women's Law Center
Californians for Economic Justice
CalPIRG
Centro Legal de la Raza
City and County of San Francisco
City of Stockton
Clean Water Action
Coalition for Humane Immigrant Rights
Common Sense Kids Action
Community Water Center
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
Improve Your Tomorrow
Leadership Counsel for Justice and Accountability
Mi Familia Vota
Mission Asset Fund
National Student Loan Defense Network
New Economics for Women
Public Counsel
Public Law Center
San Diego State College Democrats
San Francisco Treasurer & Tax Collector Jose Cisneros
Service Employees International Union
Stockton Mayor Michael Tubbs
Student Senate for California Community Colleges
The Institute for College Access & Success
UnidosUS
United Food and Commercial Workers, Western States Council
University of California Student Association

Veterans Education Success
Western Center in Law and Poverty

OPPOSITION: (Verified 8/20/20)

California Bankers Association
Civil Justice Association of California
Consumer Bankers Association
Student Loan Servicing Alliance

ARGUMENTS IN SUPPORT: The Student Borrower Protection Center, 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."

ARGUMENTS IN OPPOSITION: The Consumer Bankers Association and California Bankers Association 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.

The Student Loan Servicing Alliance is a trade association whose members service about 95% of all outstanding federal and private student loans. They appreciate amendments made by the author to this bill's right to cure but continue to oppose the bill on several grounds. "Servicers strongly support oversight by appropriate regulators that assesses our compliance with existing law and helps us improve. However, this legislation would encourage costly litigation on regulations even when a regulator has found no factual basis for action against student loan servicers. While the right to cure amendment helps reduce the potential costs meaningfully, servicers will still have to face the expense of defending against the inevitable incorrect allegations, that while perhaps well-intentioned, will be rooted in a lack of understanding of student loan servicing or the complicated regulations which are applicable."

ASSEMBLY FLOOR: 59-15, 5/28/19

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner
Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Cooper,
Daly, Diep, Eggman, Frazier, Friedman, Gabriel, Cristina Garcia, Gipson,
Gloria, Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager-
Dove, Levine, Limón, Low, Maienschein, McCarty, Medina, Mullin,
Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos,
Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago,
Smith, Mark Stone, Waldron, Weber, Wicks, Wood, Rendon

NOES: Bigelow, Brough, Chen, Choi, Cunningham, Dahle, Flora, Gallagher,
Kiley, Lackey, Mathis, Mayes, Melendez, Obernolte, Voepel

NO VOTE RECORDED: Cooley, Fong, Eduardo Garcia, Gray, Patterson, Ting

Prepared by: Eileen Newhall / B. & F.I. /
8/25/20 8:55:06

**** END ****