CONCURRENCE IN SENATE AMENDMENTS
AB 376 (Mark Stone)
As Amended August 20, 2020
Majority vote

SUMMARY:

Prohibits specified acts and establishes specified requirements related to the servicing of student loans in a manner intended to protect student loan borrowers.

The Senate Amendments:

1) Exempt federally chartered credit unions from this bill.

2) Move substantive servicer requirements and prohibited acts from the Student Loan Servicing Act (SLSA) in the Financial Code to a new title in the Civil Code.

3) 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 Loan Ombudsman and Department of Business Oversight (DBO)).

4) Make technical and clarifying changes.

COMMENTS:

Student debt – how much is owed and how it is repaid – has a profound effect on the state economy and the financial well-being of California families. After mortgages, student debt is the second largest category of consumer debt with over $1.5 trillion outstanding nationwide as of December 31, 2019, according to the Federal Reserve Bank of New York. In California alone, more than 4 million borrowers owe $147 billion. This debt places a substantial burden on the monthly budgets of California borrowers, crowding out investments that families would otherwise make in housing, small business development, and other household spending.

California has an interest in alleviating the debt service burden of student loans, the reduction of which would benefit individual borrowers and local economies. The vast majority of student loan debt is owed to the federal government, meaning repayment, or the lack thereof, of interest and principal does not cycle through the private credit markets. Instead, these payments offset accounting entries in a ledger of the federal government, which is running aggregate annual deficits that exceed $2 trillion. While California cannot cancel or forgive outstanding student loans, the state can regulate the behavior of student loan servicers in a manner that helps borrowers reduce their student loan payments over time. Keeping more income in these consumers' pockets will boost their spending on goods and services, which will create jobs and benefit the state economy.

Proponents of regulating student loan servicers identify misaligned incentives that may cause servicers to behave in a manner contrary to the interests of borrowers. Servicers are often paid a fee based on the number of borrowers in their portfolio, which provides an incentive to keep borrowers indebted over time. Servicers may also face incentives to steer borrowers into forbearance, rather than income-driven repayment plans or other lower-cost options, because it takes fewer servicing resources to enroll a borrower in forbearance.

Without regulation by states, servicers face few incentives to comply with federal regulations. An inspector general report issued last year found that the federal entity responsible for overseeing servicers "had not established policies and procedures that provided reasonable assurance that the risk of servicer noncompliance with requirements for servicing federally held student loans was mitigated."[1] The report also warned that the lack of federal oversight "did not provide servicers with an incentive to take actions to mitigate the risk of continued servicer noncompliance that could harm students."

This bill proposes a robust set of standards with which student loan servicers must comply when dealing with California borrowers. The bill prohibits servicers from engaging in activities that mislead borrowers, engaging in unfair or deceptive practices toward borrowers, and failing to accurately apply payments or accurately report payment performance to credit reporting agencies. The bill also requires servicers to meet minimum standards related to processing payments in a timely manner, maintaining accurate records, and processing questions or complaints from borrowers. The borrower protections in this bill can be enforced through a private right of action, ensuring that borrowers have pathways to appropriate remedies regardless of whether their servicer is licensed under existing state law or whether the state Attorney General has sufficient resources to bring an action.

According to the Author:
AB 376 establishes the Student Borrower Bill of Rights, ensuring that individuals with student loan debt are given reliable information, quality customer service, and meaningful access to repayment and forgiveness programs. This groundbreaking legislation will make California the first in the nation to offer student loan borrowers the same comprehensive protections that consumers with mortgages and credit cards take for granted.

After a student loan is taken out, loan servicing companies are the ones that communicate with borrowers about payments, account information, refinancing options, and other issues surrounding their loans. Despite a mountain of evidence that demonstrates rampant predatory actors, it is very clear that the federal government has deliberately stepped back from its duties to protect student borrowers and, in order to protect its consumers California must take action.

With 3,780,000 student loan borrowers across California owing $134.3 billion, it is imperative that California take a strong stance to protect borrowers against bad actors. AB 376 will ensure that California borrowers are protected and can take action if servicers violate these basic protections.

Arguments in Support:
An extensive coalition of consumer advocacy and legal aid organizations, student associations, and organized labor writes in support of the bill:

> 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

[1] https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf

> 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.

Arguments in Opposition:
Opposition raises several concerns with the bill. Many opponents dislike the consumer enforcement mechanism and want it removed from the bill or at least changed to mirror existing class action requirements under California law. Opponents believe that certain provisions of the bill are preempted under the National Bank Act or Higher Education Act.

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.

FISCAL COMMENTS:

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).

VOTES:

ASM BANKING AND FINANCE: 9-0-3
YES: Limón, Bauer-Kahan, Burke, Cervantes, Gabriel, Grayson, Mark Stone, Weber, Wicks
ABS, ABST OR NV: Chen, Choi, Melendez

ASM APPROPRIATIONS: 13-4-1
YES: Gonzalez, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Gabriel, Eduardo Garcia, Maienschein, Petrie-Norris, Quirk, Robert Rivas
NO: Bigelow, Brough, Diep, Obernolte
ABS, ABST OR NV: Fong

ASSEMBLY FLOOR: 59-15-6
YES: 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
NO: Bigelow, Brough, Chen, Choi, Cunningham, Dahle, Flora, Gallagher, Kiley, Lackey, Mathis, Mayes, Melendez, Obernolte, Voepel
ABS, ABST OR NV: Cooley, Fong, Eduardo Garcia, Gray, Patterson, Ting

SENATE FLOOR: 29-9-2
YES: Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Mitchell, Monning, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener
NO: Bates, Borgeas, Dahle, Grove, Melendez, Moorlach, Morrell, Nielsen, Wilk
ABS, ABST OR NV: Chang, Jones

UPDATED:

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CONSULTANT: Michael Burdick / B. & F. / (916) 319-3081 FN: 0003493