

Date of Hearing: May 5, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez, Chair
AB 424 (Stone) – As Amended April 21, 2021

Policy Committee:	Banking and Finance	Vote:	9 - 3
	Judiciary		8 - 2

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill enacts the Private Student Loan Collections Reform Act (Act), modeled after California's Fair Debt Buying Practices Act (FDBPA). Specifically, this bill:

- 1) Prohibits a private education lender or loan collector from making any written statement to a debtor in attempt to collect a private education loan, unless the lender or loan collector possesses and provides to the debtor specified information regarding the loan.
- 2) Requires all settlement agreements between a debtor and a private education lender or loan collector to be documented in open court or otherwise documented in writing.
- 3) Requires a private education lender or loan collector that accepts a payment as payment in full or as a full and final compromise, to provide a final statement to the debtor within 30 calendar days that clearly and conspicuously shows specified information, including that zero balance is owed.
- 4) Prohibits a private education lender or loan collector from bringing suit or initiating arbitration to collect a private education loan if the statute of limitations on the claim has expired, and requires a complaint brought by a lender or loan collector to collect a private education loan to contain specified information.
- 5) Provides a cause of action against a creditor, private education lender or loan collector for violating the Act. Remedies include actual damages, statutory damages, restitution, attorney's fees and other specified relief.

FISCAL EFFECT:

- 1) Annual costs of approximately \$200,000 for the Department of Financial Protection and Innovation (DFPI) to provide specified oversight of the private education lender and loan collector industry. Under the recently enacted California Consumer Financial Protection Law, DFPI has new regulatory powers to oversee currently unlicensed financial industries, including debt collectors.
- 2) Cost pressures (General Fund (GF)/Trial Court Trust Fund) in the mid-hundreds of thousands of dollars annually to the courts in additional workload. This bill authorizes a cause of action for violations of the Act. The estimated workload cost of one hour of court time is \$956. If 20 cases are filed statewide resulting in 20 hours of court time for each case, costs would be approximately \$382,400. Although courts are not funded on the basis of workload, increased

pressure on the courts and staff may create a need for increased funding for courts to perform existing duties. This is particularly true given that courts have delayed hundreds of trials and civil motions during the COVID-19 pandemic resulting in a serious backlog that must be resolved. The Governor's 2021-22 budget proposes \$72.2 million in ongoing GF revenue for trial courts to continue addressing the backlog and provide timely access to justice.

COMMENTS:

- 1) **Purpose.** The author states that, as of June 2020, more than 650,000 Californians owed \$10.3 billion in private student loan debt. Private student loans are not backed by the federal government and often have higher interest rates with fewer consumer protections. This bill seeks to protect private student loan borrowers from unsubstantiated lawsuits and collection on illegitimate debts. According to the author:

When borrowers fall behind on [private student] loan payments, lenders and collectors pursue aggressive litigation, characterized as an "assembly line of lawsuits" against borrowers. Yet, trusts, servicers, and collectors routinely fail to prove that they own the loan, file lawsuits within the statute of limitations, and comply with court requests for additional information. Nevertheless, lenders and collectors automatically win many of these lawsuits because borrowers are unfamiliar with the judicial system, or are unable to afford legal representation. Court rulings in favor of debt collectors result in garnished wages or seizure of federal benefits deposited in bank accounts.

- 2) **Model Behavior.** When a borrower defaults on a loan, creditors typically begin trying to collect debts through informal methods such as writing to borrowers and contacting them by phone. If these methods are unsuccessful, creditors can sue borrowers for unpaid debts and interest on the debt. Regarding private student loan debt, a representative analysis by the University of California, Irvine School of Law Consumer Law Clinic of the six largest private student loan debt collectors' case filings found that 90 percent of defendants were unrepresented in 2018 cases, with 94 percent unrepresented in 2019 cases and 89 percent unrepresented in 2020 cases. When a defendant is unrepresented, the case is generally not contested or the defendant is unable to adequately defend themselves, resulting in the defendant losing by default.

The pattern of default judgments with private student loan debt is similar to the situation that used to be presented in thousands of lawsuits for charged-off consumer debt. AB 424 is modeled after California's FDBPA, a 2013 law that has reduced collection lawsuits for unpaid credit card debt by nearly 60 percent by requiring presentation of specified information to borrowers before commencing collection activity. A study by the Center for Responsible Lending found that after enactment of the FDBPA, fewer than two percent of defendants in analyzed cases had attorney representation, indicating the FDBPA was successful in curbing lawsuits by disallowing deficient evidence. As the Assembly Committee on Judiciary's analysis of AB 424 notes, "collection actions should not function as some sort of lottery, in which creditors gamble that they can get away with shoddy evidence because nine out of ten debtors are unrepresented."