
THIRD READING

Bill No: AB 424
Author: Stone (D), et al.
Amended: 8/26/21 in Senate
Vote: 21

SENATE BANKING & F.I. COMMITTEE: 7-2, 6/23/21
AYES: Limón, Bradford, Caballero, Durazo, Hueso, Min, Portantino
NOES: Ochoa Bogh, Dahle

SENATE JUDICIARY COMMITTEE: 9-2, 7/6/21
AYES: Umberg, Caballero, Durazo, Gonzalez, Hertzberg, Laird, Stern,
Wieckowski, Wiener
NOES: Borgeas, Jones

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/26/21
AYES: Portantino, Bradford, Kamlager, Laird, McGuire
NOES: Bates, Jones

ASSEMBLY FLOOR: 56-20, 5/27/21 - See last page for vote

SUBJECT: Private Student Loan Collections Reform Act: collection actions

SOURCE: Student Borrower Protection Center

DIGEST: This bill establishes documentation and evidentiary standards related to the collection of private student loans.

ANALYSIS:

Existing law:

- 1) Provides the Student Borrower Bill of Rights (Civil Code Section 1788.100 et seq.), which imposes requirements and prohibitions on student loan servicers intended to promote meaningful access to affordable repayment and loan

forgiveness benefits and to ensure that California borrowers are protected from predatory student loan industry practices.

- 2) Provides the Student Loan Servicing Act (Financial Code Section 28100 et seq.), which requires student loan servicers to obtain a license, unless the entity meets specified exemptions.
- 3) Provides the Fair Debt Buying Practices Act (Civil Code Section 1788.50 et seq.), which regulates the buying of charged-off consumer debt, including requirements for debt buyers to have specified evidence of the origin, balance, payment history, and ownership history of a charged-off consumer debt and to provide this evidence to a debtor upon request.

This bill:

- 1) Establishes the Private Student Loan Collections Reform Act as a new title in the Civil Code with an operative date of July 1, 2022.
- 2) Defines “private education loan” as an express extension of credit to a consumer, in whole or in part, for postsecondary educational expenses, regardless of whether the student’s educational institution provided the loan. Excludes from this definition federal student loans, as specified, loans secured by real property, and short-term credit provided by an educational institution.
- 3) Prohibits a private education lender or a private education loan collector from making any written statement to a debtor in an attempt to collect a private education loan unless the private education lender or private education loan collector possesses the following information:
 - a) The name of the owner of the private education loan, the creditor’s name at the time of default, if applicable, and the creditor’s account number, if any, used to identify the private education loan at the time of default.
 - b) The amount due at default and an itemization of interest and fees.
 - c) The date that the private education loan was incurred, the date of the first partial payment or the first day that a payment was missed, whichever is earlier, that precipitated default, and the date and amount of the last payment, if applicable.
 - d) Any payments, settlement, or final remuneration of any kind paid to the creditor by a third party for financial losses incurred as a result of default.

- e) The names of all persons or entities that owned the private education loan after the time of default, if applicable, and the date of each sale or transfer.
 - f) A copy of the self-certification form and any other “needs analysis” conducted by the original creditor prior to origination of the loan.
 - g) Documentation establishing that the creditor is the owner of the specific individual private education loan at issue, subject to specified requirements.
 - h) A copy of all pages of the contract, application, or other documents evidencing the debtor’s liability for the private education loan, stating all terms and conditions applicable to the private education loan.
 - i) A list of all collection attempts made in the last 12 months, including the date and time of all calls and written communications.
 - j) A statement as to whether the creditor is willing to renegotiate the terms of the private student loan, and a statement as to whether the private education loan is eligible for an income-based repayment plan.
 - k) Copies of all written settlement communications made in the last 12 months, or in the alternative, a statement that the creditor has not attempted to settle or otherwise renegotiate the debt prior to suit.
- 4) Requires a private education lender or a private education loan collector to include the information described in #3 in its written collection communication with a debtor, if specified conditions related to default have occurred.
- 5) Requires that all settlement agreements between a debtor and either a private education lender or private education loan collector be documented in open court or otherwise reduced to writing. Further requires that the debtor be provided a copy of the written agreement.
- 6) Provides that if a private education lender or private education loan collector accepts a payment as a complete settlement of an outstanding private education loan that it shall provide the payor with a final statement with specified information, including that a zero balance is owing. This statement may be provided electronically if the parties agree.
- 7) Forbids a private education lender or private education loan collection from bringing suit or initiating an arbitration or other legal proceeding to collect a private education loan if the applicable statute of limitations has expired.

- 8) Requires, in a collection action brought by a private education lender or private education loan collector to collect a private education loan:
 - a) That the complaint allege the information set forth in (a) – (e) of #3 above, that the applicable statute of limitations has not expired, and at the plaintiff has complied with #3 and #4 above.
 - b) That the complaint have attached to it the documents set forth in (f) – (h) of #3 above.
- 9) Prohibits a default or other judgment from being entered against a defendant in an action initiated by a private education lender or private loan collector unless the plaintiff submits documents to the court establishing the facts described in #8(a) above.
- 10) Prohibits a court from entering a default judgment in an action on a private education loan unless the plaintiff has complied with the requirements of this bill, and grants the court discretion to dismiss the action if the plaintiff has failed to do so.
- 11) Exempts depository institutions that file 35 or fewer private student loan collection actions in a given year from the requirements described in #8 - #10.
- 12) Provides a cause of action against a creditor, private education lender, or private education loan collector that violates any provision of this bill and provides specified remedies.
- 13) Provides that, in a class action, defendants shall be liable for statutory damages of not less than \$500 per violation to each named plaintiff. Additional damages of up to the lesser of \$500,000 or one percent of the net worth of the defendant are available if the court finds that the defendant engaged in a pattern and practice of violating a provision of this bill.
- 14) Exempts private education lenders and private education loan collectors from liability for damages if they show by a preponderance of the evidence that a violation was not intentional and resulted from a bona fide error.

Background

Californians owe more than \$10 billion in private student loan debt, according to statistics provided by the author's office from the Federal Reserve Bank of New York and the US Department of Education. Using the same data sources, the author's office estimates that more than 650,000 Californians owe this debt. The

California Department of Financial Protection and Innovation stated in a recent press release that more than 1.1 million Californians owe private student loan debt.¹

Relative to federal loans, private student loans typically charge higher interest rates, contain fewer consumer protections, and are targeted at the most vulnerable borrowers, like those attending for-profit schools.² Similar to federal loans, private student loans are difficult to discharge in bankruptcy, which reduces the incentive for private lenders to carefully underwrite loans or to offer modified payment plans. Many private student loans are bundled and sold off after origination to investors who pay third-parties modest fees to service the loans and pursue delinquent debts. This market structure – a risky product with creditor-friendly collections terms serviced by austere third parties – creates incentives that lead to outcomes harmful to vulnerable borrowers.

Collections practices related to private student debt have come under legal scrutiny in recent years. In 2017 the Consumer Financial Protection Bureau (CFPB) took action against the National Collegiate Student Loan Trusts and their debt collector, Transworld Systems, Inc., for illegal student loan debt collection lawsuits. These companies sued consumers for private student loan debt that the companies couldn't prove was owed or was too old to sue over, and the lawsuits relied on the filing of false or misleading legal documents.³ The prevalent factor that caused these failures was a business model that relied on mass production of lawsuits by unqualified paralegals and clerks who were forced to make false attestations of their knowledge of individual cases.⁴

In private litigation, consumers have been sued for debts they no longer owed, by companies they never borrowed from, and by creditors that lacked the legal standing to sue in the first place.⁵ Judges across the country have quashed hundreds of lawsuits due to the poor evidentiary merits of cases brought by private student lenders and collectors. The probability of a borrower prevailing in such a case, however, is dependent on whether the borrower is represented by an attorney.

¹ <https://dfpi.ca.gov/2020/04/23/california-provides-expansion-of-student-loan-relief-most-private-loan-servicers-agree-to-help/>

² <https://www.nytimes.com/2017/07/17/business/dealbook/student-loan-debt-collection.html>

³ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-national-collegiate-student-loan-trusts-transworld-systems-illegal-student-loan-debt-collection-lawsuits/>

⁴ <https://www.nytimes.com/2017/11/13/business/dealbook/student-debt-lawsuits.html>

⁵ Ibid.

Comments

- 1) *This bill protects consumers who cannot afford to hire lawyers.* Although state law provides consumer protections related to student loan servicing and debt collection, the law fails to establish commonsense evidentiary standards before collection activities commence against consumers who allegedly owe debts related to private student loans. The author and sponsors approached this bill with the goal of providing similar protections to a consumer who does not have legal representation as the protections provided to a consumer represented by a competent attorney.

The current system is not designed to create equitable outcomes. If two consumers are sued for debts that they do not legally owe, but one consumer can hire legal representation while the other cannot, the deck is stacked against the unrepresented consumer. This bill would bring the effective requirements related to documentation that applies in a court setting upstream in the collections process. By requiring adequate documentation before a collector engages in written communication with the borrower, this bill aims to stop unfair collections practices before they commence, rather than relying on a consumer's attorney to sort out the mess in court, assuming the consumer can afford an attorney in the first place.

- 2) *This bill is modeled after the Fair Debt Buyers Act.* The Fair Debt Buyers Practices Act (FDBPA) was enacted in 2013 after an extensive stakeholder process between consumer advocates, creditors, debt buyers, collectors, and then-Attorney General Kamala Harris. The FDBPA addresses similar underlying problems found in the market for charged-off consumer debt (often credit card debt) as this bill seeks to address in the private student loan market: poor recordkeeping related to amounts owed and a lack of documentation showing who has legal rights to collect on debts. These deficiencies led to consumers being sued on debts they did not owe, and unrepresented consumers would often receive default judgments because they failed to appear in court.

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

According to the Senate Appropriations Committee, costs of approximately \$239,000 in the first year and \$199,000 ongoing to the Department of Financial Protection and Innovation for increased administrative and enforcement workload related to the oversight of debt collection activity specific to private student loan debt (Financial Protection Fund).

SUPPORT: (Verified 8/26/21)

Student Borrower Protection Center (source)
California Association for Micro Enterprise Opportunity
California Association of Nonprofits
California Dental Association
California Federation of Teachers
California Low-Income Consumer Coalition
California Optometric Association
California Student Aid Commission
Californians for Economic Justice
Center for Public Interest Law University of San Diego School of Law
Consumer Federation of California
Consumer Reports
Friends Committee on Legislation of California
Housing and Economic Rights Advocates
Legal Aid Association of California
Legal Aid Foundation of Los Angeles
Neighborhood Legal Services of Los Angeles County
Nextgen California
Public Counsel
Public Law Center
SEIU California
Student Debt Crisis
Student Senate for California Community Colleges
The Century Foundation
The Institute for College Access & Success
University of California Graduate and Professional Council
University of California Student Association
University of California, Irvine School of Law Consumer Law Clinic
Western Center on Law and Poverty
Young Invincibles

OPPOSITION: (Verified 8/26/21)

California Association of Collectors, Inc.
California Bankers Association
California Credit Union League
Civil Justice Association of California
Consumer Bankers Association

ARGUMENTS IN SUPPORT: A coalition of consumer advocates and community organizations writes in support:

Trusts, loan servicers and debt collectors, or creditors, often lack documentation to prove they have the legal right to pursue private student loan debt by seeking wage garnishment orders in court... Many times, debt collectors win these frivolous lawsuits because borrowers are unfamiliar with the judicial system and usually are unable to afford legal representation...

[AB 424] bans the use of mass-produced documentation, also known as “robo-signing,” by prohibiting creditors from obtaining judgements against borrowers without accurate, personalized loan records and documentation. This protection will prevent creditors from obtaining court orders to garnish wages and seize assets to repay defaulted student loans that creditors cannot prove borrowers owe.

ARGUMENTS IN OPPOSITION: The Consumer Bankers Association argues that this bill would create regulatory requirements that differ from requirements at the federal level and requests an exemption for federally regulated banks. The association proceeds to argue that while 98% of private student loans are repaid successfully due to careful underwriting, this bill’s requirements related to collection of unpaid debts will “dramatically reduce availability” of private education loans.

ASSEMBLY FLOOR: 56-20, 5/27/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooper, Daly, Frazier, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, 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, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wood, Rendon

NOES: Bigelow, Chen, Choi, Cooley, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Gray, Kiley, Lackey, Mathis, Nguyen, Patterson, Seyarto, Smith, Voepel, Waldron

NO VOTE RECORDED: Mayes, Valladares

Prepared by: Michael Burdick / B. & F.I. /
8/31/21 9:27:44

**** **END** ****