

CONCURRENCE IN SENATE AMENDMENTS
AB 424 (Stone)
As Amended August 26, 2021
Majority vote

SUMMARY

Establishes documentation and evidentiary standards related to the collection of private student loans.

Senate Amendments

- 1) Require a private education lender or loan collector to provide specified information related to a borrower's debt in the first written communication after a loan is in default and accelerated or in continuous default for at least 12 months, whichever is first.
- 2) Exempt, from specified requirements, an entity that meets the following criteria: a) the entity is depository institution, as defined; and b) the entity, along with its affiliates, will be a plaintiff in 35 or fewer private student loan collection actions in the current calendar year.
- 3) Provide that, in a class action, defendants shall be liable for specified statutory damages to each named plaintiff. Additional damages of up to the lesser of \$500,000 or 1% 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.
- 4) Remove the requirement that the information a lender or collector must include a statement on whether the debt arising from the private education loan is dischargeable in bankruptcy.
- 5) Make additional clarifying and conforming amendments.
- 6) Delay implementation until July 1, 2022.

COMMENTS

Student loan debt in California. 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 United States Department of Education. 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. 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.

Loan servicing and debt collection issues. Originating lenders often sell or outsource the servicing of private student loans to a third party. After funding the loan, the originator bundles and sells the loan, which may pass through multiple entities before landing in a trust that pays a separate entity to service the loan. The servicer receives payments from borrowers and sends money back to the trust. In the case of delinquent loans, the servicer may assign the loan to a

different servicer that specializes in overdue accounts. These servicers may engage in debt collection practices directly or may outsource collection activities to debt collectors. In order to eke out a profit, servicers seek to restrict or streamline activities in order to keep their costs low.

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. Consumers were sued for private student loan debt that the companies could not prove was owed or was too old to sue over, and the lawsuits relied on the filing of false or misleading legal documents. 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.

In private litigation, students 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. 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.

Modeled after the Fair Debt Buying Practices Act. This bill is modeled on California's Fair Debt Buying Practices Act, which the Legislature enacted in 2013 to put in place basic requirements for 1) the documentation that a debt buyer must possess to begin debt collection communication with an alleged debtor, 2) pleading standards in debt collection lawsuits, and 3) evidentiary standards to obtain a default judgment. It also created a private right of action for violations

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."

Arguments in Support

This bill is co-sponsored by Consumer Reports, NextGen California, Student Borrower Protection Center, Student Debt Crisis, and Young Invincibles, and supported by a number of other organizations, including the California Dental Association, California Association of Realtors, California Federation of Teachers, and SEIU California.

Community Legal Aid SoCal writes in support and argues that "Consumers tell us they want to settle consumer defense matters but they relate that they are met with resistance, lack of cooperation (unreasonable terms) and lack of civility. The odds are stacked in favor of the plaintiff loan servicers leaving the debt lenders and collectors with a lack of motivation to attempt [to] reach a fair, good faith settlement."

The Consumer Federation of California writes that recent federal student loan relief measures only encompassed federally-funded loans, leaving a gap in protections for other borrowers: "Private student loans represent about 8% of total education debt, according to MeasureOne, which tracks data on private student lending. Not only were these borrowers left out of the pandemic related 'payment pause' granted to federal borrowers, they are also rarely included in the ongoing legal and policy conversations about loan forgiveness."

Arguments in Opposition

The California Association of Collectors opposes this bill because it "places unnecessary and overly burdensome requirements on debt collectors in a strict liability statute and which would dramatically increase the damages that will be imposed on debt collectors (the vast majority of which are small businesses employing less than ten people) for making innocent an unintentional mistakes."

FISCAL COMMENTS

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).

VOTES:

ASM BANKING AND FINANCE: 9-3-0

YES: Grayson, Bauer-Kahan, Burke, Cervantes, Gabriel, Cristina Garcia, Petrie-Norris, Stone, Wicks

NO: Chen, Choi, Nguyen

ASM JUDICIARY: 8-2-1

YES: Stone, Chau, Chiu, Lorena Gonzalez, Holden, Kalra, Maienschein, Reyes

NO: Davies, Smith

ABS, ABST OR NV: Kiley

ASM APPROPRIATIONS: 12-4-0

YES: Lorena Gonzalez, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

NO: Bigelow, Megan Dahle, Davies, Fong

ASSEMBLY FLOOR: 56-20-2

YES: 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

NO: Bigelow, Chen, Choi, Cooley, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Gray, Kiley, Lackey, Mathis, Nguyen, Patterson, Seyarto, Smith, Voepel, Waldron

ABS, ABST OR NV: Mayes, Valladares

SENATE FLOOR: 31-8-1

YES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

NO: Bates, Borgeas, Dahle, Grove, Jones, Melendez, Nielsen, Ochoa Bogh

ABS, ABST OR NV: Stern

UPDATED

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