

Date of Hearing: April 28, 2025

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Avelino Valencia, Chair

AB 866 (Ortega) – As Introduced February 19, 2025

SUBJECT: Student loan servicing

SUMMARY: Clarifies that student loans servicers are subject to the Unfair Competition Law and that student loan debts are considered debts for purposes of the Rosenthal Fair Debt Collection Act.

Specifically, **this bill:**

- 1) Specifies that a student loan servicer is a “person” for purposes of the Unfair Competition Law.
- 2) Specifies that a student loan is a “debt” for purposes of the Rosenthal Fair Debt Collection Act.
- 3) Provides that a transaction giving rise to a student loan is a consumer credit transaction for purposes of the Rosenthal Act.

EXISTING LAW:

- 1) Regulates the collection of consumer debt under the Rosenthal Fair Debt Collection Practices Act, which generally prohibits deceptive, dishonest, unfair, and unreasonable debt collection practices by debt collectors and regulates the form and content of communications by debt collectors to debtors and others. (Civil Code § 1788 *et seq.*)
- 2) Establishes the Unfair Competition Law (UCL), which provides a statutory cause of action for any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising, including over the internet. (Business and Professions Code § 17200 *et seq.*)
- 3) Establishes the Student Loan Servicing Act and requires servicers of student loans to get a license from the Department of Financial Protection and Innovation (DFPI, formerly, Department of Business Oversight). (Financial Code § 28100 *et seq.*)
- 4) Enacts the California Consumer Financial Protection Law (CCFPL), which provides the DFPI with oversight and enforcement authority related to providers of consumer financial products and services that are not currently under the department’s authority. (Financial Code § 90000 *et seq.*)
- 5) Prohibits unlawful, unfair, deceptive, and abusive acts or practices by persons subject to the CCFPL. (*Ibid.*)
- 6) Defines the following terms:

- a) “Debt” means money, property, or their equivalent that is due or owing or alleged to be due or owing from a natural person to another person. (Civil Code §1788.2(d).)
- b) “Consumer credit transaction” as a transaction between a natural person and another person in which property, services, or money is acquired on credit by that natural person from the other person primarily for personal, family, or household purposes. (Civil Code § 1788.2(e).)
- c) “Person” means and includes natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.

FISCAL EFFECT: Unknown. This bill is keyed Fiscal by Legislative Counsel.

COMMENTS:

- 1) Purpose. According to the author:
In 2022, the Attorney General was able to return \$11.5 million to California student loan borrowers, victims of widespread misconduct by the massive student loan servicer Navient, and to cancel \$261 million in student debt. AB 866 makes clear that all student loan servicers, regardless of their affiliation with other states, cannot engage in misconduct to defraud Californians struggling under ballooning student loan debt. AB 866 will make sure that all student loan borrowers, regardless of who services their loans, are protected by California’s robust consumer protection laws and that the Attorney General, along with other public prosecutors, can enforce those laws against those servicers.
- 2) Student Loan Debt. There is \$1.77 trillion in student loans, and the average undergraduate borrower owes \$29,300. Starting May 5, 2025, the Department of Education will resume involuntary collections for defaulted student loans. This includes taking money from tax refunds and Social Security through the Treasury Offset Program. Borrowers will get a 30-day warning before wage garnishment begins. A loan is considered default if no payment is made for 270 days.
- 3) Clarity in the Law. Existing enforcement measures are not consistently applied because the Rosenthal Fair Debt Collection Act (Rosenthal Act) and the Unfair Competition Law (UCL) do not explicitly reference student loan debt and student loan servicers.

Clarifying that student loan debt is “debt” under the Rosenthal Fair Debt Collection Act (Rosenthal Act) can lead to consistent application of the law. Unlike the federal Fair Debt Collection Act, the Rosenthal Act is broader and applies to original creditors and third-party collectors. According to the Assembly Judiciary analysis of AB 866 on April 8, 2025, applying the Rosenthal Act has been mixed.

Student loan servicers often frame their conduct as “servicing,” not collecting, and courts have been divided on whether the Rosenthal Act applies to loan servicers acting on behalf of the original creditor. Codifying student loans as “debts” and servicing as arising from “consumer credit transactions” (Financial Code Section 28180.5 (b)–(c)) eliminates that ambiguity and solidifies the availability of private remedies. By closing this interpretive gap, AB 866 provides borrowers with a clear legal basis to challenge abusive collection and servicing practices under state law.

As noted in the author’s statement, the Attorney General secured restitution against Navient Corp., once the nation’s largest student loan servicer, for violations under UCL. The enforcement action brought by the Attorney General in 2018 came after an investigation revealed that Navient had violated the UCL by “steering vulnerable borrowers into costly forbearances and failing to advise them on the benefits of income-driven repayment programs, among other claims,” among other misconduct. However, not all cases have as clear applicability under UCL.

The Supreme Court decision in *Nebraska v. Biden* (*Biden v. Nebraska* (2023) 600 U.S. ____ [143 S.Ct. 2355]) ruled that the Biden administration overstepped its authority when it announced that it would cancel up to \$400 billion in student loans. While this decision was focused on the extent of the Biden Administration’s authority, it reinforced that laws must be clear to ensure they will be upheld.

AB 866 also reinforces that student loan servicers are “persons” subject to the UCL, eliminating any ambiguity about the statute’s applicability to the student loan industry. This is particularly important given the increasing volume of borrower complaints about misapplied payments, misinformation, and servicing delays.

ARGUMENTS IN SUPPORT.

The Department of Justice writes:

While the Consumer Financial Protection Bureau (CFPB) has continued to identify significant and ongoing violations of consumer protection laws, the new federal administration’s efforts to dismantle CFPB and potentially stop efforts to rein in bad practices by student loan servicers necessitates a response by California to ensure that California law effectively protects student borrowers from misconduct by these servicers.

REGISTERED SUPPORT / OPPOSITION:

Support

California Department of Justice (Sponsor)
Consumer Federation of California
Nextgen California

Opposition

None on file.

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