

Date of Hearing: April 22, 2019

**ASSEMBLY COMMITTEE ON BANKING AND FINANCE**

Monique Limón, Chair

AB 376 (Mark Stone) – As Amended March 25, 2019

**SUBJECT:** Student loan servicing

**SUMMARY:** Creates the Student Borrower Bill Of Rights (the Act) imposing new requirements on persons engaged in student loan servicing within California, as specified. Specifically, **this bill:**

**Chapter 1. Student Borrower Bill Of Rights:**

- 1) Prohibits a student loan servicer, as defined, from engaging in abusive acts or practices when servicing a student loan within California.
- 2) Defines an act or practice as abusive if it does either of the following:
  - a. Materially interferes with the ability of a borrower to understand a term or condition of a student loan.
  - b. Takes unreasonable advantage of any student borrower, as specified.
- 3) Provides appropriate definitions to facilitate the Act, including, but not limited to:
  - a. Defines “borrower” as person who has received or agreed to pay a student loan, or a person who shares in the responsibility for repaying a student loan, as specified.
  - b. Defines “Student loan servicer” as any person engaged in the business of servicing student loans, as specified, excluding debt collectors, as defined in subdivision (c) of Section 1788.2 of the Civil Code.

**Chapter 2. Rules of the Road:**

Establishes standards for student loan servicers in California, requiring them to:

- 1) Post and process student loan payments in a timely manner.
- 2) Apply overpayments in a manner that is in the best financial interest of the borrower.
- 3) Apply partial payments in a manner that minimizes negative impacts to borrowers.
- 4) Ensure past dues fees are reasonable and proportional to the total costs of the loan, as specified.
- 5) Diligently oversee its service providers, including third-party service providers, as specified.
- 6) Timely process student loan paperwork, including appropriate training for servicers and access to applications for income-driven repayment plans, as specified.

- 7) Maintain accurate records about borrower's accounts and that these records be retained for the life of the student loan, unless otherwise prohibited by law.
- 8) Have policies and procedures in place allowing borrowers to escalate a complaint or inquiry to a senior representative if the borrower's inquiry cannot be handled in a single phone call or the borrower is dissatisfied with the initial qualified request, as defined.
- 9) Protect borrowers from negative consequences related to a borrower's inquiry, as specified.
  - a. Defines "negative consequence" for purposes of the subdivision as including, but not limited to, negative credit reporting, lost eligibility for a borrower benefit, late fees, interest capitalization or other financial injury.
- 10) Protect borrowers from negative consequences from a sale, assignment, transfer, system conversion, or any other payment made by the transferor service, as specified.
- 11) Ensure all necessary information, as specified, regarding a borrower, a borrower's account, and a borrower's student loan accompanies a loan when it transfer to a new person engaged in servicing the student loan within 45 days, as specified.
- 12) Provide for specialized training for any customer service personnel that advises military borrowers, borrowers working in public service, older borrowers, or borrowers with disabilities about student loan repayment benefits and protections.

### **Chapter 3. Enforcement:**

- 1) Requires anyone engaged in servicing a student loan comply with state and federal laws, including the provisions of the Act.
- 2) Provides that any consumer who suffers damage because of the failure of a person engaged in student loan servicing, as defined by the Act, may bring an action on their own behalf and on behalf of a similarly situated class of consumers against that person to recover or obtain damages, as specified, and as defined by the court.

### **Chapter 4. California Student Borrower Advocate:**

Creates the Student Borrower Advocate and gives the advocate responsibilities that include receiving complaints, reviewing complaints, analyzing data, assisting borrowers, providing public information, analyzing and monitoring the development and implementation of laws and rules, as specified.

### **Chapter 5. Spotlight on Industry Practices:**

Requires DBO monitor for risks to consumers in the student loan servicing industry. It describes the information the Commisioner may gather to complete these tasks including gathering information from servicers and reporting the data publically.

**EXISTING LAW:**

AB 2251 (Stone), Chapter 824, Statutes of 2016: Enacts the Student Loan Servicing Act, operative July 1, 2018, establishing a new licensing law applicable to student loan servicers, administered by DBO, as specified.

AB 38 (Stone) Chapter 379, Statutes of 2018: Changes the Student Loan Servicing Act authorizing the Commissioner of DBO to implement licensee requirements under the Act, as specified.

**FISCAL EFFECT:** Unknown

**COMMENTS:** In the late 1960's, a political debate took place in California asking the question whether students should be paying a larger share of the cost for the states' four-year colleges. This began a nearly half-century run on increases to student fees and tuition in California that has resulted in taking California's four-year state colleges from what was then nearly free to currently over \$14,000 for tuition and fees at a UC.

This increase in tuition and fees accompanied an ever-increasing cost of housing, meals, books and supplies. In order to manage the cost of college, significant numbers of students turned to student loans to achieve their college education goals. The federal Consumer Financial Protection Bureau (CFPB) reports that today there is over \$1.3 trillion in student loan debt nationwide, with over \$134 billion in California alone.

The author states:

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.

Student loan debt has climbed to become the second largest type of household debt in America. Only mortgage debt, which is generally secured by real estate, is larger. Amid ongoing discussions about the negative impacts that this level of debt has on younger student borrowers, new concerns about the negative impacts on the nation's economy have emerged. Large student

debt burdens can prevent home ownership, retirement savings, entrepreneurship, an interest in careers that require extra school, or an ability to return to rural areas after graduation.

When students take out student loans and inevitably engage with student loan servicers for the scheduling and repayment of those loans it can be stressful and difficult, even when the system works properly. However, to date the CFPB has received over one million student borrower complaints.

This bill contains a provision enabling the student borrower to sue their servicer if the student suffers damages as a result of a servicer's failure to comply with the provisions of the Act. A student borrower may bring an action for actual damages, injunctive relief, restitution, punitive damages, attorney's fees, and other relief, including treble damages in certain circumstances.

In 2017, the CFPB filed a lawsuit against several large student loan servicers claiming they systematically and illegally failed borrowers. The Attorney General of California joined three other states in suing Navient, one of the nation's largest servicers, for failing and misleading borrowers.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Nextgen California (Sponsor)  
Americans For Financial Reform  
California Asset Building Coalition  
California Association Of Nonprofits  
California Low-Income Consumer Coalition  
Californians For Economic Justice  
Calpirg, California Public Interest Research Group  
Coalition For Humane Immigrant Rights  
Consumer Action  
Consumer Federation Of California  
Consumer Reports  
East Bay Community Law Center  
Housing And Economic Rights Advocates  
New Economics For Women  
Public Law Center  
Student Borrower Protection Center  
Student Debt Crisis  
The Institute For College Access & Success  
Unidosus

### **Opposition**

Student Loan Servicing Alliance

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