

HOUSE BILL REPORT

HB 1169

As Reported by House Committee On:
Higher Education
Appropriations

Title: An act relating to student opportunity, assistance, and relief for student loans.

Brief Description: Enacting the student opportunity, assistance, and relief act.

Sponsors: Representatives Orwall, Pollet, Appleton, Goodman, Tarleton, Bergquist, Stanford, Fitzgibbon, Doglio and Wylie.

Brief History:

Committee Activity:

Higher Education: 1/25/17, 2/14/17 [DPS];
Appropriations: 2/24/17 [DP2S(w/o sub HE)].

Brief Summary of Second Substitute Bill

- Establishes a student education loan debt hotline and website where borrowers can receive assistance from student education loan debt counselors on their student education loans.
- Requires educational institutions, lenders, servicers, and collection agencies of student education loans to send notices to borrowers about the student education loan debt hotline, website, and counselors.
- Repeals multiple provisions allowing suspension of a professional license due to student loan default.
- Changes the judgment interest rate for unpaid private student loan debt to 2 percentage points above the prime rate, unless the judgment interest rate is specified in the contract.
- Increases the bank account and wage garnishment exemptions for judgments on private student loan debt.
- Modifies the writs and forms for garnishment and continuing lien on earnings to specify whether a writ is for private student loan debt, and if so, to notify the debtor of their exemption rights for private student loan debt.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON HIGHER EDUCATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hansen, Chair; Pollet, Vice Chair; Holy, Ranking Minority Member; Van Werven, Assistant Ranking Minority Member; Orwall, Sells, Stambaugh and Tarleton.

Staff: Megan Mulvihill (786-7304).

Background:

Student Loan Debt.

Federal and private student loans can be used to cover tuition and fees, books, supplies, and costs of attendance at a post secondary institution. There are two federal student loan programs: the William D. Ford Federal Direct Loan (Direct Loan) Program and the Federal Perkins Loan Program. The Direct Loan Program is the largest program, and the United States Department of Education is the lender. Under the Perkins Loan Program the institution is the lender, and loans are provided to students with exceptional financial need. If a student does not qualify for federal student loans, or the student has unmet need, the student may use private student loans to cover their costs. Private student loans typically have higher interest rates, require good credit or a cosigner, and have less repayment options than federal student loans.

According to the Institute for College Access and Success' Project on Student Debt, 58 percent of 2015 Washington graduates of four-year public and private nonprofit institutions had student loan debt with an average balance of \$24,804.

Student Loan Default.

A federal student loan falls into default if a borrower fails to make a payment for 270 days. Upon default, the entire balance of the loan, including interest, becomes due, and the borrower loses the options of deferment, forbearance, and repayment plans. In addition to the collection's process, the federal government may collect payment through treasury offsets, tax offsets, and wage garnishment. The federal government may garnish up to 15 percent of a borrower's disposable pay and seize a borrower's federal or state tax refund or payments, such as social security.

Private student loans vary, but may have between 90 to 180 days in delinquency before a borrower defaults. Upon default, the loan is sent to collections, and the lender may sue the borrower to obtain a judgment, in which case a judgment interest rate is added onto the loan. The judgment interest rate is either the rate set forth in the contract or 12 percent. The judgment can be used to obtain a writ of garnishment to garnish the borrower's bank accounts and wages. Under current law, private student loan debt is considered consumer debt, and a borrower is allowed an exemption of \$500 for all bank accounts, savings and loan accounts, stocks, bonds, or other securities. Wages exempt from garnishment is the greater of the following:

1. 35 times the federal minimum hourly wage; or
2. 75 percent of disposable earnings.

Professional License Suspension for Defaulted Education Loans.

In 1996 legislation was enacted that allowed an agency or board in charge of issuing a professional license to suspend a borrower's license who defaults on a federal or state-guaranteed educational loan or service-conditional scholarship, if reported by the lending agency. There are 21 states, including Washington, that have similar laws.

Professional license suspension for educational loan default applies to lawyers, accountants, architects, auctioneers, cosmetologists, hair designers, barbers, manicurists, estheticians, assisted living facility providers, contractors, embalmers and funeral directors, engineers and land surveyors, escrow agents, birthing center operators, poison information specialists, real estate brokers and managing brokers, landscape architects, water well construction operators, plumbers, real estate appraisers, court reporters, fire sprinkler system contractors, private investigators, security guards, process servers, bail bond agents, boxers, martial artists, wrestlers, teachers, and health care professionals.

Housing Counselors.

The Foreclosure Fairness Act established a toll-free number for homeowners in foreclosure to receive assistance from housing counselors. The housing counselors are provided free of charge to homeowners to provide assistance, information, and be a conduit between the bank and homeowners. Housing counselors have training in financial counseling and are overseen by the Housing Finance Commission (Commission).

Summary of Substitute Bill:

Part I: Student Education Loan Debt Counselors.

Borrower, collection agency, educational institution, lender, servicer, student education loan, student education loan debt counseling organization, and student education loan debt hotline are all defined.

A notice must be made available to a borrower by letter or other means of electronic delivery approved by the borrower with information on the statewide student education loan debt hotline and website where a borrower can receive information and assistance from student education loan debt counselors at no charge.

Educational institutions must provide the notice anytime a borrower with loans certified by the institution drops out, transfers to a different educational institution, or graduates. Lenders, servicers, or collection agencies must provide the notice anytime a notice of delinquency, default, collections, or a summons and complaint for a student education loan is issued to a borrower. In addition, the Student Achievement Council, the State Board for Community and Technical Colleges, and the educational institutions are encouraged to disseminate the information about the student education loan debt hotline, website, and counselors by posting it on websites, including it in financial aid educational materials and notices, educating financial aid advisors, and any other method deemed appropriate with the goal of notifying as many students as possible.

A student education loan debt counseling organization must be a nonprofit that has student education loan counselors familiar with issues regarding student education loan debt, including:

- differences between private and federal student loans, and the different types of federal loans;
- grace periods, repayment, deferment, forbearance, delinquency, and default statuses;
- impact of private and federal student education loan default;
- situations for loan discharge;
- options for resolving delinquency and requirements for student education loan rehabilitation;
- when student education loan consolidation may benefit a borrower, and the pros and cons of federal student education loan consolidation versus private student education loan consolidation;
- impacts of refinancing a federal or private student education loan with other consumer debt; and
- the debt collection and judgment process and a borrower's rights and responsibilities if they are garnished.

The Department of Commerce must enter into interagency agreements to contract with the Commission and other appropriate entities to implement the hotline and counseling program. The Commission must approve counseling organizations to become student education loan debt counseling organizations. Student education loan debt counseling organizations and their counselors have a duty to: (1) act in good faith to assist borrowers by informing the borrower of his or her options and rights; (2) advise the borrower about documents the borrower must have to seek a student education loan modification or other resolution; and (3) provide guidance, advice, and education as considered necessary. The student education loan debt counseling organization and counselors are not liable for civil damages resulting from any acts of omissions, unless it constitutes gross negligence, fraud, or misrepresentation.

Part II: Professional License Suspensions.

All provisions that allow an agency to suspend a professional license due to student loan default, if reported by a lending agency, are repealed, except for escrow agents.

Part III: Private Student Loan Debt.

A private student loan is defined as any loan not guaranteed by the federal or state government that is used solely for personal use to finance post secondary education and costs of attendance at an educational institution. A private student loan includes a loan made solely to refinance a private student loan. A private student loan does not include an extension of credit made under an open-end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling.

For unpaid private student loan debt, the judgment interest rate is 2 percentage points above the prime rate, as published by the Board of Governors of the Federal Reserve System on the first business day of the calendar month immediately preceding the date of entry, unless the interest rate is specified in the loan contract and set forth in the judgment.

The exemption allowed for bank accounts, savings and loan accounts, stocks, bonds, or other securities for private student loan debt is \$2,500, regardless of the number of existing separate accounts, stocks, bonds, or securities. For garnishment based on a judgment issued for the collection of private student loan debt, wages exempt from garnishment is the greater of the following:

1. 50 times the minimum hourly wage of the highest minimum wage law in the state at the time the earnings are payable; or
2. 85 percent of disposable earnings.

If a writ of garnishment or a writ for continuing lien on earnings is issued under an order or judgment for private student loan debt, the forms notifying the debtor of the garnishment or continuing lien on earnings must specify that the garnishment or continuing lien is based on an order or judgment for private student loan debt. The form notifying a debtor of garnishment and their exemption rights must state the bank account and wage garnishment exemptions for private student loan debt, if the debt was for private student loans.

In addition, a cell phone, personal computer, and printer are added to the list of personal property items exempt from execution, attachment, and garnishment.

Substitute Bill Compared to Original Bill:

The definition of "borrower" was modified to mean a resident of the State of Washington who is obligated to repay a student education loan, with the borrower's residency determined by the most recent permanent address provided by the borrower to the educational institution, lender, servicer, or collection agency. The definition of "educational institution" is also modified by including a reference to institutions of higher education as defined in RCW 28B.10.016, and the definition of private student loan was changed to mean loans used solely, rather than primarily, for personal use to finance post secondary education and costs of attendance.

Provisions about the student education loan debt hotline and counselors were modified to clarify that the counselors are available at no cost to the borrower, and the notice about the hotline and counselors is allowed to be sent to the borrower by electronic means approved by the borrower.

Other changes include the addition of a cell phone, computer, and printer to the list of personal property items exempt from execution, attachment, and garnishment, and the addition of fraud and misrepresentation to the list of acts or omissions that a student education loan debt counselor or counseling agency could be liable for.

Lastly, language was added to the intent section to explain how housing counseling services offered to homeowners in foreclosure provides a model for student education loan debt counselors.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 307, relating to writs of garnishment, which takes effect January 1, 2018.

Staff Summary of Public Testimony:

(In support) Forty-two percent of all 18–19 year olds have student loan debt. One in four student loan borrowers are in default. Statistics indicate that 10 percent of every graduating class are going into default. This is the next crisis. It is very similar to the mortgage crisis with similar characteristics, like loans being sold off in trusts and failure to properly apply payments. The idea for this came from the successful foreclosure process. The structure from that process is already in place, and the student loan debt counselors can build upon the success of the housing counselors. If students receive help understanding their loans from counselors, it can help prevent them from getting into trouble.

Student loan debt is a different kind of debt that cannot be discharged in bankruptcy. Student loan debt can only be discharged in very rare circumstances. Private student loans hardly offer any options, like repayment plans, to help struggling borrowers. Plus, if a student defaults on a student loan, that student is barred from receiving anymore student loans, which means they may not be able to finish their education. A student would need to rehabilitate their loan, but it is hard to know how. Borrowers need a system in place to help them with their debt and provide additional protections. A 12 percent judgment interest rate is very generous. Repealing the license suspension provisions helps borrowers repay. An individual stripped of their credentials cannot pay back a loan. The Department of Licensing has not suspended any new licenses in the last five years because lending agencies are not reporting default.

Affordability of college is a prime concern. Given the message that the state wants students to go to college, the bill aligns with core principles that students need information early. These decisions affect students for the rest of their lives. They often sign up for student loans without realizing what they are signing up for. Access to student loan counselors is a pivotal tool to help students. Attorneys can only help a few borrowers. There is a lot of information out there, and it can be confusing. Many students are not aware of how many student loans they have. Even if a student is aware of repayment plans, it does not solve the problem because the plans are complicated. It is hard to sign up for them, the website is not intuitive, and the borrower has to redo it every year.

Providing an avenue for students to get assistance and to regulate harassment with student loans is not preempted by the federal government.

Some suggestions for the bill include to define the term "drop out," to address how the new garnishment limits apply to those already in garnishment, and how this applies to students attending online universities in which the physical presence of the school is outside Washington.

No person who seeks to better themselves with education should have their life ruined financially. Washington should lead the way on student loan debt and help students soar.

(Opposed) None.

Persons Testifying: Representative Orwall, prime sponsor; Becky Thompson, Washington Student Achievement Council; Christina Henry, Henry, DeGraff, and McCormick Professional Service; Julia Kellison, Northwest Justice Project; Teri Randall; Anna Nepomuceno and Ben Rowe, Washington Student Association; Stephanie Sams, Department of Licensing; Ariel Speser and Lili Sotelo, Northwest Justice Project; Jeff Beaulac; and Branden Durst.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Higher Education. Signed by 20 members: Representatives Ormsby, Chair; Robinson, Vice Chair; MacEwen, Assistant Ranking Minority Member; Bergquist, Cody, Fitzgibbon, Hansen, Hudgins, Jinkins, Kagi, Lytton, Nealey, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 12 members: Representatives Chandler, Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Buys, Caldier, Condotta, Haler, Harris, Schmick, Taylor, Vick, Volz and Wilcox.

Minority Report: Without recommendation. Signed by 1 member: Representative Manweller.

Staff: Lily Sobolik (786-7157).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Higher Education:

The Appropriations Committee recommended the addition of a null and void clause, making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 307, relating to writs of garnishment, which takes effect January 1, 2018.

Staff Summary of Public Testimony:

(In support) There is a \$1.2 trillion dollar problem which is a student loan debt crisis. Ten percent of every graduating class is defaulting. Students are not being informed about their options and income-based repayment plans. If a student defaults on a student loan before they finish college, they have to rehabilitate it before they can get more assistance to finish college. There is an opportunity to build upon the success of the housing counselors provided under the Foreclosure Fairness Act. The structure is already there and doing this for student loans could help prevent borrowers from getting in trouble by providing tools to help borrowers know their options. Student loan debt cannot be discharged in bankruptcy, and it does not make sense to take away a person's ability to make a living by suspending their license. It is difficult to repay the loan if you remove their ability to earn. Also, student loan debt is threatening the security of older adults. Older adults are frequently cosigning on student loans, and the amount of debt of this group of people has doubled. Older adults are more likely to default and have their social security garnished. This is not loan forgiveness. There are discussions happening about a way to raise a sustainable fee to cover the expense of student loan counselors.

(Opposed) None.

Persons Testifying: Teri Thompson Randall; Zachary Kinneman; Joanna Grist, AARP; and Anna Nepomuceno, Associated Students of the University of Washington–Tacoma.

Persons Signed In To Testify But Not Testifying: None.