

HOUSE BILL REPORT

E2SSB 6029

As Passed House:
March 2, 2018

Title: An act relating to establishing a student loan bill of rights.

Brief Description: Establishing a student loan bill of rights.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Liias, Ranker, Fain, Frockt, Billig, Darneille, Palumbo, Rolfes, Keiser, Cleveland, Pedersen, Hunt, Wellman, Conway, Chase, Saldaña, Kuderer, Hasegawa and Mullet; by request of Attorney General).

Brief History:

Committee Activity:

Higher Education: 2/21/18, 2/23/18 [DP];

Appropriations: 2/24/18, 2/26/18 [DP].

Floor Activity:

Passed House: 3/2/18, 87-11.

Brief Summary of Engrossed Second Substitute Bill

- Creates the Student Education Loan Advocate to receive, review, and provide assistance to student education loan borrowers who file complaints.
- Requires student loan servicers (servicers) to obtain a license from the Department of Financial Institutions (DFI) to operate in the state, and permits the DFI to establish fees.
- Requires servicers to comply with various provisions regarding assessing and crediting fees; account information and dispute requests; acquiring, transferring, and selling servicing rights; and reporting information.
- Prohibits third-party student loan modification servicers from various practices that may misrepresent the student loan situation or encourage a borrower to do something counterproductive to their situation.
- Requires the Washington State Institute for Public Policy to study student loan authorities who refinance student loans from proceeds of tax-exempt bonds.

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: Do pass. Signed by 9 members: Representatives Hansen, Chair; Pollet, Vice Chair; Holy, Ranking Minority Member; Van Werven, Assistant Ranking Minority Member; Haler, Orwall, Sells, Stambaugh and Tarleton.

Staff: Megan Mulvihill (786-7304).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 21 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Bergquist, Caldier, Cody, Fitzgibbon, Graves, Haler, Hansen, Hudgins, Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 11 members: Representatives Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Buys, Condotta, Manweller, Schmick, Taylor, Vick, Volz and Wilcox.

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

Staff: Linda Merelle (786-7092).

Background:

Consumer Loan Act.

The Consumer Loan Act (CLA) authorizes the Department of Financial Institutions (DFI) to regulate consumer loan companies who conduct business in Washington. Consumer loan companies include mortgage lenders and consumer finance companies. The CLA limits the rates and fees lenders may charge on loans, restricts certain loan provisions such as prepayment penalties, requires lenders to fully disclose the terms of loans, and prohibits lenders from engaging in unfair and deceptive acts and practices. A violation of the CLA is a violation of the Washington Consumer Protection Act.

Student Loan Servicers.

Student loan servicers are a link between borrowers and lenders. Lenders often contract with servicers to manage borrowers' accounts, process monthly payments, manage enrollment in alternative repayment plans, and communicate directly with borrowers. The United States Department of Education (US DOE) holds contracts with nine servicers for the Federal Direct Loan Program and the Federal Family Education Loan Program. A lender can switch servicers many times over the course of a student loan.

According to the Consumer Financial Protection Bureau, there are no consistent market-wide standards for student loan servicing, and servicers generally have discretion in determining policies related to many aspects of servicing operations.

Washington Student Loan Transparency Act.

In 2017 the Legislature passed Substitute Senate Bill 5022, also known as the Washington Student Loan Transparency Act (Act). Subject to appropriations, the Act mandates that state educational institutions provide notification to student borrowers regarding their student education loans. Required information includes total payoff amount, total loans taken out, monthly repayment amounts, and percentage of aggregate federal direct loan borrowing limit applicable to the program of study. Additionally, certain information on how to access resources for borrowers must be provided. Starting July 1, 2018, educational institutions must begin providing notifications to borrowers each time a financial aid package that includes a new or revised student education loan is offered.

Summary of Bill:

Student Loan Advocate.

The Student Loan Advocate (Advocate) is created within the Student Achievement Council (Council) to provide assistance to student loan borrowers. In collaboration with the Office of the Attorney General (AGO), the Advocate receives and reviews borrowers' complaints. A complaint regarding a student education loan servicer (servicer) licensed, or subject to licensing, must be referred to the DFI. Complaints regarding servicers not subject to licensure are referred to the AGO's Consumer Protection Division. The Advocate, the DFI, and the AGO must confer annually on complaints received, the referral processes, and reporting requirements. The Advocate may hire additional staff as necessary to implement its duties.

The Advocate is also tasked with, among other things, compiling and analyzing data on complaints; assisting borrowers in understanding their rights and responsibilities under the terms of their student loans; providing information to the public and state regarding problems and concerns of borrowers; analyzing and monitoring the development and implementation of federal, state, and local laws relating to borrowers; assessing the number of residents with federal student loans who have applied for, received, or are awaiting a decision on forgiveness or discharge of a student loan; disseminating information on the availability of the Advocate; and taking action to assist student loan borrowers, such as communicating with a servicer to resolve a complaint.

The Advocate must also establish a student loan borrower education course by October 1, 2020. The Council must report to the Legislature by December 31, 2020, on the implementation and effectiveness of the Advocate, the types of complaints received, how the complaints have been resolved, and data on student loan issues.

Student Loan Notices.

The student loan notices sent to enrolled students by higher education institutions about their student loans must also include a statement that income-driven repayment plans allow a federal student loan borrower to reduce their monthly payment according to a percentage of their income, along with a brief summary of the applicable plans. The notices must also include the contact information for the Advocate, and the provisions mandating the notices are no longer subject to appropriations.

Student Loan Servicers.

Educational institution, student education loan, student education loan borrower, student education loan servicer, student education loan servicing, and third-party student education loan modification services are all defined.

Licensing Requirements. A servicer must obtain a license from the DFI to service or modify student loans in Washington, and are subject to the requirements under the CLA, unless the servicer is one of the following exempt entities:

- trade, technical, vocational, or apprentice programs;
- post secondary schools that service their own student loans;
- persons servicing five or fewer student loans;
- guarantors of federal student loans that do not also service federal student loans;
- the United States government servicing student loans it originated;
- any state or local government servicing student loans it originated; and
- persons providing third-party student loan modification services.

A servicer is in violation of the CLA if found to be:

- conducting licensable activity from any licensable location;
- misrepresenting or omitting student loan information;
- providing inaccurate information to a credit bureau;
- failing to report to a credit bureau;
- refusing to communicate with the borrower or borrower's representative;
- applying payments in a manner inconsistent with the borrower's stated intent;
- failing to respond within 15 calendar days to communications from the Advocate; or
- failing to provide a response within 15 calendar days to a consumer complaint submitted to the service by the Advocate. A licensee may request additional time up to 45 days, provided the request is accompanied by an explanation of why additional time is needed.

Licensing Fees. The Director of the DFI must establish fees to cover administrative costs for the Student Loan Servicer Program and the Advocate. The fees collected must be deposited in the Financial Services Regulation Fund (Fund) and may include an annual assessment; late fees; hourly investigation and examination fees, including travel expenses; application fees; initial license fees; and transaction fees.

The Student Loan Advocate Account (Account) is created in the custody of the State Treasurer. Beginning in the 2020-21 fiscal year, the State Treasurer must annually transfer from the Fund to the Account the greater of: (1) \$175,000; or (2) 20 percent of the student loan servicing annual assessment fee. The DFI must provide to the State Treasurer information on the amount of annual assessment collected from student loan servicing.

Servicer Assessed Fees. A servicer must assess a fee within 45 days of when the fee incurred and, the fee must be clearly explained to the borrower no more than 30 days after assessing the fee.

Servicer Credited Fees. All amounts received by the servicer must be accepted and credited within one business day of the date received. Any regularly scheduled payment made prior to the scheduled due date must be credited no later than the due date. If a payment is not

credited, the borrower must be notified of why and what actions to take within 10 business days by mail.

Servicer Records and Requests for Account Information. The servicer must maintain records of each request for information regarding a dispute or error until the student loan is paid in full, sold, or otherwise satisfied. A borrower may request their account information and file a dispute, provided sufficient detail about the inquiry is provided to the servicer. The servicer must make reasonable efforts to comply with the request and respond within 15 business days. The servicer's response must include specific information, including the current balance due, any funds held in a suspense account, any known shortages, information on the current holder of the loan, the servicer's contact information, and if applicable, provide explanations on any decision made with respect a borrower's application for discharge or refund. The servicer must promptly correct any errors and refund any fees incorrectly assessed.

In addition, once per year for free, a borrower may request more detailed information that must cover the two-year period prior to the request. If the servicer claims any delinquent or outstanding sums are owed prior to the two-year period, then the account history provided must go back to the month that the servicer claims any outstanding sums are owed. The request may include a copy of the original note, or if unavailable, an affidavit of lost note, and an itemized statement of:

- all fees and charges assessed under the student loan; and
- a full payment history clearly identifying all of the debts, credits, application and disbursement of all payments received, and other activity on the loan.

Servicer's Acquiring Servicing Rights. Procedures are established for servicers acquiring, transferring, or selling servicing rights from another servicer. In all cases, the servicers must provide certain notices to the borrower, including information about:

- the date of the transfer;
- when the receiving servicer will begin to accept payments;
- the contact information for both the transferring and receiving servicers;
- a statement that the transfer of servicing does not affect any student loan term or condition;
- information about how to obtain a payment history from both the transferring and receiving servicer, including a count of payments that count towards student loan forgiveness options;
- a notification indicating whether an alternative repayment plan or loan consolidation application is pending; and
- information about how to submit complaints in the event of a servicing error.

The transferring servicer must also inform the receiving servicer if a loan modification request is pending and must continue processing loan modification requests received during the transfer process. In addition, records must be retained to maintain the borrower's uninterrupted enrollment in their existing repayment plan.

Additional Requirements for Servicers. Servicers must provide information regarding repayment and loan forgiveness options and the Advocate on their websites. In addition, the

information must be provided via written correspondence or electronic mail at least once per calendar year.

Servicers must collect, maintain, and report to the DFI specific information about student loans in their portfolio, such as loan volume, default, refinance and modification information, loan types, and collection practices.

A servicer must maintain liquidity, operating reserves, and a tangible net worth in accordance with generally accepted accounting principals as determined by the DFI's Director.

Third-Party Student Education Loan Modification Services.

Any person providing third-party student loan modification services (modification servicer) must:

- not charge or receive any money prior to completing services;
- not charge unreasonable or excessive fees; and
- immediately inform the borrower if the servicer requires additional information or documentation, or if it becomes apparent that a modification, refinancing, consolidation, or change in repayment plans is not possible.

Prohibited practices for a modification servicer include requiring or encouraging a borrower to:

- sign a waiver of his or her legal defenses and rights;
- waive his or her right to receive notice before the loan servicer initiates collection proceedings;
- agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or loan owner;
- cease communication with the lender, investor, loan servicer, or the US DOE; or
- change his or her contact information to that of the third-party education loan servicer or other third party.

In addition, the modification servicer must not:

- represent that funds paid to the modification servicer will be applied to the borrower's student loan balance;
- change a borrower's login information, personal identification number, or contact information with a servicer or the US DOE; or
- misrepresent certain information, including:
 - the impact on a borrower's credit history, score, or report;
 - the availability, performance, cost, or characteristics of any alternative to for-profit modification services through which the consumer can obtain assistance with refinancing, consolidation, or change of repayment plans for a student loan;
 - the amount a borrower may save by engaging in modification services;
 - the terms, conditions, limitations, contingencies, or requirements to reapply or recertify eligibility for any refinancing, consolidation, or change of repayment plans for a student loan; and
 - any affiliation, connection, or relationship with the US DOE or its contracted entities.

Student Loan Refinancing.

A disclosure must be made to the borrower that some repayment and forgiveness options will no longer be available if the borrower refinances a federal student loan with a consumer loan.

The DFI does not have any enforcement, examination, or reporting obligations or duties under the Student Loan Bill of Rights Act until January 1, 2019, or until the final adoption of rules for the act, whichever is sooner.

Washington State Institute for Public Policy Student Loan Refinance Study.

The Washington State Institute for Public Policy (WSIPP) must conduct a study on student loan authorities that refinance existing federal and private student loans from the proceeds of tax-exempt bonds. The report on the findings of the study is due to the higher education committees of the Legislature by December 31, 2018. The WSIPP must:

- review guidance on the subject issued by the United States Treasury;
- review the structure and characteristics of state-operated loan refinance programs in other states;
- review available literature on the impacts of borrower requirements of similar programs;
- estimate potential savings and costs to borrowers from differences in interest rates of loans refinanced by the state as compared to similarly situated borrowers of federal direct loans and private loans issued one, five, and 10 years ago; and
- consider the value of repayment and forgiveness options that may be lost to a borrower of a federal loan who chooses to refinance.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Higher Education):

(In support) There are slightly more than 800,000 borrowers who owe more than \$24 billion in student loan debt. This is a growing problem. Statistics show that student loan debt used to be the cost of doing business, but it has grown so much that it has changed the economy. Student loan borrowers are delaying marriage, having families, and buying homes, and it can be a deciding factor in career choice. This provides enhanced consumer protections. The WSIPP study and Advocate are super important. While the study would not guarantee a refinancing entity, it would provide information about whether this is feasible.

All borrowers need to be treated fairly, and this treats student loan borrowers the same way other consumer borrowers are treated. This is not about debt forgiveness. While it can help the state get ahead of future problems, it will not solve the problem. This protects borrowers, allows for more certainty, simplifies the process, and empowers graduates.

(Opposed) None.

(Other) The bill can be effectively implemented.

Staff Summary of Public Testimony (Appropriations):

(In support) Student loans are a practical reality for most graduates. This bill has had strong bipartisan support. The underlying policy addresses fairness. It is not about debt forgiveness. The bill provides a set of guarantees and protections for borrowers and will prepare graduates to make empowered life decisions. Students strongly support the Washington State Institute for Public Policy study that is required under this bill.

(Opposed) None.

(Other) The industries affected will pay fees to cover the costs of regulation.

Persons Testifying (Higher Education): (In support) Senator Liias, prime sponsor; Yasmine Trudeau and Ellen Austin Hall, Office of the Attorney General; and Ruben Flores, State Board for Community and Technical Colleges.

(Other) Charlie Clark, Department of Financial Institutions

Persons Testifying (Appropriations): (In support) Yasmin Trudeau, Office of the Attorney General; and Matthew Morrow, Associated Students of Washington State University.

(Other) Charlie Clark, Department of Financial Institutions.

Persons Signed In To Testify But Not Testifying (Higher Education): Matt Munoz, University of Washington.

Persons Signed In To Testify But Not Testifying (Appropriations): None.