

# SENATE BILL REPORT

## E2SHB 1440

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As of March 21, 2017

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

**Brief Description:** Establishing a student loan bill of rights.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Stonier, Stambaugh, Hudgins, Johnson, Ortiz-Self, Stokesbary, Sells, Jinkins, Ryu, Appleton, Pollet, Senn, Peterson, Kilduff, Bergquist, Stanford, Frame, Slatter and Dolan; by request of Attorney General).

**Brief History:** Passed House: 3/01/17, 71-27.

**Committee Activity:** Higher Education: 3/21/17.

### Brief Summary of Bill

- Creates the Student Education Loan Ombuds to receive, review, and provide assistance to student education loan borrowers who file complaints.
- Requires student education 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 (1) comply with various provisions regarding assessing and crediting fees; (2) account information and dispute requests; (3) acquire, transfer, and sell servicing rights; and (4) report information.
- Prohibits third-party student education loan modification servicers from various practices that may misrepresent the student loan situation or encourage a borrower to do something counterproductive to their situation.

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### SENATE COMMITTEE ON HIGHER EDUCATION

**Staff:** Evan Klein (786-7483)

**Background:** Consumer Loan Act (CLA). The CLA authorizes the DFI to regulate consumer loan companies who conduct business in Washington. Consumer loan companies

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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 lenders often contract with loan 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.

In September 2015, Connecticut passed an act establishing a student loan bill of rights. The act created a student loan ombudsman and provided the Connecticut Department of Banking with authority to license and regulate student loan servicers operating in the state.

**Summary of Bill:** Student Education Loan Ombuds (Ombuds). The Ombuds is created within the Student Achievement Council (Council) to provide assistance to student loan borrowers. In collaboration with the Attorney General's Office (AGO), the Ombuds 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 Ombuds, the DFI, and the AGO must confer annually on complaints received, the referral processes, and reporting requirements.

The Ombuds 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; and analyzing and monitoring the development and implementation of federal, state, and local laws relating to borrowers.

The Ombuds must also establish a student loan borrower education course. The Council must report to the Legislature by December 31, 2019, on the implementation and effectiveness of the Ombuds, the types of complaints received, and how the complaints have been resolved.

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;
- postsecondary schools that service their own student loans;
- persons servicing five or fewer student loans;
- the United States government servicing student loans it originated; and
- any state or local government servicing student loans it originated.

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

- conducting licensable activity from any unlicensed 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; or
- applying payments in a manner not consistent with the borrower's stated intent.

Licensing Fees. The Director of DFI must establish fees to cover administrative costs for the Student Loan Servicer Program and the Ombuds. 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 Education Loan Ombuds account (Account) is created in the custody of the State Treasurer. Beginning in the 2019-20 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 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 ten 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, and the servicer's contact information.

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; and
- a notification indicating whether an alternative repayment plan or loan consolidation application is pending.

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.

Additional Requirements for Servicers. Servicers must provide information regarding repayment and loan forgiveness options and the Ombuds 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 Director.

Third-Party Student Education Loan Modification Services. Any person providing third-party student loan modification services (modification servicer) must:

- provide a written disclosure summary in a form to be prescribed by the DFI;
- not charge or receive any money prior to completing services;
- not charge fees in excess of usual and customary charges or that are unreasonable; 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 their legal defenses and rights;
- waive their 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; and
- change their 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 following:
  - 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 options will no longer be available if the borrower refinances a federal student loan with a consumer loan.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill takes effect on January 1, 2018. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony:** PRO: AARP has made student loan debt a priority. Students deserve a basic level of quality from their student loan servicers. We encourage students to undertake higher education and accrue debt to do so, so we should ensure students have a basic level of servicing. The federal government may not have the appropriate services in place to assist Washington students. Currently, student loan servicers are not regulated by any state agency. This bill enacts very basic, minimum servicing standards for

student loan servicers who choose to operate in Washington State. This bill protects borrowers, but also co-signers on loans.

OTHER: The bill would provide DFI with the necessary tools to effectively license servicers and enforce the provisions of the bill.

**Persons Testifying:** PRO: Representative Monica Jurado Stonier, Prime Sponsor; Becky Thompson, Washington Student Achievement Council; Laura Baird, Attorney General's Office; Benjamin Huff, The Evergreen State College/ The Washington Student Association.

OTHER: Charlie Clark, DFI.

**Persons Signed In To Testify But Not Testifying:** No one.