

SENATE BILL REPORT

E2SSB 6029

As Passed Senate, February 14, 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 & Workforce Development: 1/11/18, 1/18/18 [DPS-WM, DNP, w/oRec].

Ways & Means: 1/30/18, 2/06/18 [DP2S, DNP, w/oRec].

Floor Activity:

Passed Senate: 2/14/18, 35-13.

Brief Summary of Engrossed Second Substitute Bill

- Establishes a Student Education Loan Advocate (Advocate) to assist student education loan borrowers (borrowers), compile data, provide information on student education loans, and receive, review, and take action on complaints from borrowers.
- Requires student education loan servicers (servicers) to obtain a license from the Department of Financial Institutions (DFI) to operate in the state, and authorizes 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 education loan modification servicers from several practices that may misrepresent the student loan situation or encourage a borrower to do something counterproductive to their situation.
- Instructs the Washington Institute of Public Policy to review available literature on the impacts of establishing a student loan authority and to report back to the legislature by December 31, 2018.

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.

SENATE COMMITTEE ON HIGHER EDUCATION & WORKFORCE DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 6029 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Ranker, Chair; Palumbo, Vice Chair; Hawkins, Ranking Member; Carlyle, Liias, Miloscia and Nelson.

Minority Report: Do not pass.

Signed by Senator Ericksen.

Minority Report: That it be referred without recommendation.

Signed by Senator Short.

Staff: Kellee Gunn (786-7429)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6029 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair; Honeyford, Assistant Ranking Member; Billig, Carlyle, Conway, Darneille, Fain, Hasegawa, Hunt, Keiser, Mullet, Palumbo, Pedersen, Ranker and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Braun, Ranking Member; Bailey, Becker, Brown, Schoesler and Warnick.

Minority Report: That it be referred without recommendation.

Signed by Senators Rivers and Wagoner.

Staff: Daniel Masterson (786-7454)

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

Servicers. Servicers are companies that collect payments, respond to customer service inquiries, and perform other administrative tasks associated with maintaining a federal student loan on behalf of a lender. Servicers are the link between the borrower and lender. For federally held student education loans, borrowers are assigned servicers by the United States Department of Education (USDOE). The USDOE currently contracts with nine servicers.

Washington Student Loan Transparency Act. In 2017, the Legislature passed SSB 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 Engrossed Second Substitute Bill: Advocate. An Advocate position is created within the Student Achievement Council (Council). The Advocate receives and reviews complaints from borrowers. Complaints regarding student loan servicers must be referred to DFI. Complaints not covered by DFI's authority will be referred to the Attorney General's Office (AGO) consumer complaint division. The AGO, DFI, and Advocate must confer annually regarding servicer complaints, referral processes, and the Advocate's reporting requirements.

The Advocate must:

- compile information on borrower's complaints;
- provide information to stakeholders;
- analyze laws, rules, and policies;
- assess annually the number of residents with federal student education loans who have applied for, received, or are waiting for loan forgiveness;
- provide information on the Advocate's availability to borrowers, institutions of higher education, and others; and
- assist borrowers in applying for forgiveness or discharge of student education loans, including communication with a student education loan servicer to resolve a complaint, or any other actions necessary.

A borrower's education course must be established by October 1, 2020. The Council must submit a report to the appropriate committees of the Legislature on the program, the effectiveness of the Advocate, complaints received regarding student education loans, and other related data by December 31, 2020. Implementation is subject to appropriation and funds available in the Student Loan Advocate Account (Account).

The Act. Institutions of higher education must, within existing resources, send notices to borrowers regarding their student financial aid. Those notices must provide a summary of applicable plans and a statement that income-driven repayment plans may reduce monthly payments. Information regarding resources for borrowers must include a complaint portal and information on the Advocate.

Fees. The Director of DFI shall establish fees to cover the cost of the licensing program and the Advocate. Fees may include an annual assessment paid by the licensee, a late fee on an annual assessment, hourly investigation and examination fees, nonrefundable application processing fees, initial license fees, and transaction fees on the administrative changes of loans. Investigations that require travel shall be at the expense of the licensee. Fees collected shall be deposited into the financial services regulation fund (Fund).

The Account is created in the custody of the state treasurer. The Fund must annually transfer the greater of \$175,000 or 20 percent from the Fund to the Account beginning in the 2020-21 Fiscal Year. The Account is not subject to appropriations. Expenditures may be used only to cover the costs of administering the program.

Servicers. A servicer must obtain a license from DFI to service student loans in Washington, 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.

All servicers, regardless of licensure, must follow the requirements enforced by DFI except for private, nonprofit educational institutions that service their own loans during the time of the student's enrollment in that institution.

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;
- applying payments in a manner not consistent with the borrower's stated intent;
- failing to respond within 15 days, or shorter if requested, to communications from the Advocate; or
- failing to provide a response within 15 calendar days to a consumer complaint submitted to them by the Advocate.

Servicers must provide, free of charge, information regarding repayment options on their website as well as information on the Advocate. DFI shall collect and maintain specific information about the servicer's loan portfolio. A servicer licensee must maintain liquidity, operating reserves, and a tangible net worth in accordance with generally acceptable accounting principles. The director of DFI may adopt rules as necessary and grant waivers to facilitate commerce and protect consumers. Enforcement, examination, or reporting obligations are not required until January 1, 2019, or until final adoption of rules, whichever comes first.

Servicer Records, Requests for Account Information, and Notice. A servicer must provide information to borrowers within a certain amount of time regarding fees assessed and amounts received and credited. Written and electronic records regarding a loan must be maintained until the loan is paid off, sold, or otherwise satisfied. A borrower may request certain information from the servicer, and the servicer must provide that information within 15 days. Correspondence between the servicer and borrower must include information regarding the account, loan balance, holder of the loan, and contact information of the servicer.

Acquiring Servicing Rights. When acquiring servicing rights, the acquiring servicer must notify the borrower.

Transferring Servicing Rights. When transferring or selling the servicing of loans, a transferring servicer must provide notification to the borrowers between 45 days and 60 days before the transfer and provide them with:

- the date of the transfer;
- contact information for the transferring and receiving servicers; and
- assurance that the transfer does not change conditions of the loan.

Third-Party Student Education Loan Modification Services (modification servicer). Any modification servicer must:

- not charge or receive any money until the agreed upon services have been performed;
- not charge fees in excess of usual and customary charges; and
- immediately inform a borrower in writing if a modification, refinancing, consolidation, or other change is not possible.

Any modification servicer must not:

- require a borrower to waive their legal defenses, counter claims, or other legal defenses;
- represent that the funds paid to the modification servicer will be applied to the borrower's student education loan balance;
- require or encourage a borrower to waive their right to notice before collection proceedings;
- require or encourage a borrower to agree to pay charges outside the agreement between the borrower and the lender, servicer, or owner of the loan;
- require or encourage a borrower to cease communication with the lender, investor, or USDOE, and/or change their contact information to that of the modification servicer;
- change a borrower's login information, personal identification number, or contact information on file with a servicer or the USDOE;
- misrepresent expressly or by implication (1) the availability, performance, cost, or characteristics of any alternative to for-profit modification services including communicating directly with the servicer, the USDOE, a government agency, or using a nonprofit agency or program; (2) the amount of money or percentage of debt a borrower may save; (3) total cost to purchase services; (4) terms, conditions, limitations, contingencies, requirements to reapply or recertify, consolidation of, or change of repayment plans; (5) any relationship with the USDOE or its contracted entities; and (6) impact on credit history, score, or report from engaging in their services.

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.

Washington State Institute of Public Policy. The Washington State Institute of Public Policy must review available literature on the impacts of establishing a student loan authority to refinance existing federal and private undergraduate and graduate loans from the proceeds of

tax-exempt bonds. The report on its findings is due to the higher education committees of the Legislature by December 31, 2018.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Proposed Substitute (Higher Education & Workforce Development): *The committee recommended a different version of the bill than what was heard.* PRO: The student loan bill of rights extends existing consumer protections to students and those in repayment. A student loan advocate would be someone a student can turn to for advice on where to go to refinance their education loans. People with student loans are putting off retirement, purchasing a home, and getting married. Realtors have looked at the impact student debt has had on people's lives. It is affecting consumer behavior and is a serious issue. Student loan defaults can lead to liens on homes. This bill is about fairness. This bill provides basic parameters for servicers collecting on student loan debt. Student loans are a practical reality for most college graduates. Other forms of debt collection are regulated, but not student loan servicers.

This debt can never be discharged. Student borrowers are in dire need of an advocate. This bill addresses issues that borrowers have when trying to get out of default. It is difficult for the private industry to provide these services for student borrowers, as it is not something that is profitable. Nonprofits are also not equipped to help student loan borrowers. Many are in dire need of help. Upon graduating from a for-profit college, the an exit loan class narrowly detailed the amount of debt I had taken on. After the six month grace period I was blindsided by the amount I was charged and went into default. Borrowers need transparency. Student loan borrowing is on the rise. Only one-third of borrowers are current in paying off their student loans. During the foreclosure crisis, mortgage servicers were found doing these same things that loan servicers are doing now. Homeowners are protected, and we should protect student loan borrowers as well. Student loan borrowers are not clear who they should contact for help. This bill provides an important service.

OTHER: We support the intention of this bill and seek two modest amendments regarding exclusions to the definition of student education loans as well as a technical change regarding the definition of loans. This bill will provide upstream support to avoid litigation and credit ruin downstream. Consistent and accessible education on student loan borrowing is needed given the complexity of this area.

Persons Testifying (Higher Education & Workforce Development): PRO: Senator Marko Liias, Prime Sponsor; Nathan Gorton, Washington REALTORS; Ashley Hardin, citizen; Christina Henry, Henry & DeGraaff, PS; Marcy Bowers, Statewide Poverty Action Network; Becky Thompson, Washington Student Achievement Council; Matt Munoz, UW Graduate and Professional Student Senate; Adán Espino Jr., University of Washington, Tacoma; Arne Nelson, Washington Student Association; Allison Maluchnik, Executive

Director, Asset Building Coalition of Mason County; Ellen Austin Hall, Attorney General's Office; Yasmin Trudeau, Legislative Director, Attorney General's Office; Stephanie Bowman, Executive Director, Washington Asset Building Coalition; Ernie Tao, Associated Students of the University of Washington; Matthew Morrow, Director of Legislative Affairs, Associated Students of Washington State University.

OTHER: Edward Barton, Saint Martin's University; Violet Boyer, Independent Colleges of Washington; Charlie Clark, DFI; Julia Kellison, Northwest Justice Project.

Persons Signed In To Testify But Not Testifying (Higher Education & Workforce Development): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: This bill is excellent policy. The WSIPP study is an important part of the bill. Student loan authorities in other states are already saving borrowers hundreds of dollars per month. Minnesota and North Dakota both have programs that have lowered borrowing costs. It makes sense to require the WSIPP study be completed during 2018 so that the information is ready for the next legislative session. This bill would help a borrower who had been making payments on a loan with the understanding that principal was being paid down, but later learned that it had not been. This bill provides a set of guarantees for borrowers and co-signers and provides them with a specialized advocate. The benefits far outweigh the costs.

OTHER: The bill provides the Department of Financial Institutions with the tools it needs to effectively license, examine and take enforcement action where appropriate.

Persons Testifying (Ways & Means): PRO: Senator Marko Liias, Prime Sponsor; Matt Munoz, UW Graduate and Professional Student Senate; Adán Espino Jr, University of Washington, Tacoma; Yasmin Christopher, Attorney General's Office.

OTHER: Charlie Clark, Department of Financial Institutions.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.