

HOUSE BILL REPORT

E2SHB 1440

As Passed House:
May 2, 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:

Committee Activity:

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

Floor Activity:

Passed House: 3/1/17, 71-27.

First Special Session

Floor Activity:

Passed House: 5/2/17, 68-24.

Brief Summary of Engrossed Second Substitute 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 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 various practices that may misrepresent the student loan situation or encourage a borrower to do something counterproductive to their situation.

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 7 members: Representatives Hansen, Chair; Pollet, Vice Chair; Van Werven, Assistant Ranking Minority Member; Orwall, Sells, Stambaugh and Tarleton.

Minority Report: Without recommendation. Signed by 1 member: Representative Holy, Ranking Minority Member.

Staff: Megan Mulvihill (786-7304).

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 21 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Stokesbary, Assistant Ranking Minority Member; Bergquist, Caldier, Cody, Fitzgibbon, Hansen, Hudgins, Jinkins, Kagi, Lytton, Manweller, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan and Tharinger.

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

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.

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 Engrossed Second Substitute Bill:

Student Education Loan Ombuds.

The Student Education Loan Ombuds (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 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; or
- applying payments in a manner not consistent with the borrower's stated intent.

Licensing Fees. The Director of the 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 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, 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's 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 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;

- 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;
- misrepresent certain information, including:
 - 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.

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 (Higher Education):

(In support) Student loan debt is a growing problem, and this bill is in response to complaints received by the AGO. The AGO has received hundreds of complaints in the last five years. Complaints about trouble communicating with servicers, harassing phone calls, errors on credit reports, fraud, mismatching payments, and other complaints. Students have a right to accurate information and to have servicers perform very basic responsibilities. This bill is modeled after laws adopted in other states and protects students by ensuring they can count on their servicers. The bill is a roadmap for servicer best practices and addresses bad actors by holding all student loan servicers to the same conduct. These are for-profit businesses that make a profit off loan status, so it is in their best interest to have borrowers in good repayment status. There are lessons learned from the foreclosure crisis, which had the same type of behavior and situations as student loans do. This is a mechanism to hold servicers accountable.

The bill also creates an Ombuds to help struggling borrowers and to compile data for policy makers. The Ombuds can help provide information and help students navigate debt.

A student loan is unlike other types of debt. At its best it's an investment in the future. At its worst it can stay with a borrower for life, even after. Student loan debt can only be discharged in certain circumstances. Trying to pay off student loans is like swimming against the tide.

(Opposed) None.

(Other) Student loan servicers would be regulated similarly to mortgage servicers, and this could be effectively implemented.

Staff Summary of Public Testimony (Appropriations):

(In support) Student loan debt is the subject of dinner table conversations all across the state. The Office of the Attorney General requested this legislation, and it is modeled after legislation passed in Connecticut. The fiscal note is rather large, but the impact to the State General Fund is modest. The provision that requires the Washington State Institute for Public Policy to conduct a study could be removed to limit the impact on the State General Fund. Students do not necessarily understand the obligations that they are undertaking when they take out a student loan. Students are subject to a whirlwind of information, and this bill will help fill the knowledge gap.

(Opposed) None.

(Other) The Department of Financial Services (DFI), Division of Consumer Services, regulates lenders, brokers, mortgage servicers, and other financial servicing entities. The DFI can effectively implement the provisions of this bill. The program is self-funded, and the DFI will work to manage expenditures. The first fiscal year's expenditures will be covered by the DFI's regulatory fund.

Persons Testifying (Higher Education): (In support) Representative Stonier, prime sponsor; Ellen Austin Hall and Ben Roesch, Attorney General's Office; Lili Sotelo, Columbia Legal Services; Ariel Speser and Julia Kellison, Northwest Justice Project; Becky Thompson, Washington Student Achievement Council; Anna Nepomuceno, University of Washington–Tacoma; and Benjamin Rowe, Associated Students of Eastern Washington.

(Other) Charlie Clark, Department of Financial Institutions.

Persons Testifying (Appropriations): (In support) Benjamin Rowe, Associated Students of Eastern Washington University; and Benjamin Huff, The Evergreen State College.

(Other) Mike Webb, Office of the Attorney General; and Charlie Clark, Department of Financial Institution.

Persons Signed In To Testify But Not Testifying (Higher Education): Nova Gattman, Workforce Training and Education Coordinating Board.

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