

SENATE BILL REPORT

2SHB 1169

As Reported by Senate Committee On:
Higher Education, March 28, 2017

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

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

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Orwall, Pollet, Appleton, Goodman, Tarleton, Bergquist, Stanford, Fitzgibbon, Doglio and Wylie).

Brief History: Passed House: 3/01/17, 76-22.

Committee Activity: Higher Education: 3/21/17, 3/28/17 [DPA-WM].

Brief Summary of Amended Bill

- Establishes a student loan debt hotline and website to receive assistance from debt counselors.
- Requires educational institutions, lenders, servicers, and collection agencies of student loans to send notices to borrowers about the 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 liens 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.

SENATE COMMITTEE ON HIGHER EDUCATION

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.

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Wilson, Chair; Bailey, Vice Chair; Palumbo, Ranking Minority Member; Frockt.

Staff: Evan Klein (786-7483)

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 postsecondary 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:

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

Professional License Suspension for Defaulted Education Loans. An agency or board in charge of issuing a professional license may 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 Amended 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 the following:

- 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 the borrower's 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 a pattern of fraud, an intentional misrepresentation, 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 \$1,000, 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:

- 50 times the minimum hourly wage of the highest minimum wage law in the state at the time the earnings are payable; or
- 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.

EFFECT OF HIGHER EDUCATION COMMITTEE AMENDMENT(S):

- Makes clarifications to the definition of borrower.
- Specifies that student loan debt counseling organizations may be held liable for patterns of fraud, and intentional misrepresentations.
- Changes the amount of money held in bank accounts, savings, stocks, and bonds that is exempt from execution, attachment, and garnishment in default of a private student loan from \$2,500 to \$1,000.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: 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. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony on Second Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Over 40 million students have over \$1.4 trillion dollars of debt. This student loan debt is difficult to discharge. Young students are signing documents that obligate them to repay this debt. The idea with this bill was to look at the housing finance system and adopt a similar hotline for assisting students with understanding their student loan debt. Washington is an outlier that allows for up to 25 percent garnishment of wages, which makes it difficult to pay off student debt. Access to student loan debt counselors could be a pivotal tool to assisting students with their debt. This bill complements other efforts at the federal level. It is important that if students do get into trouble with their private loan, they are able to avoid poverty and homelessness. The structure of the housing finance commission has assisted borrowers for home loans, and this expansion to student loans will be great for Washington students. Many private loans are sold to private investors, who benefit from defaults and garnishments.

CON: The issue with student loan defaults is a large problem. However, it makes no sense to remove a tool to enforce the repayment of student loans. Removing the provision about losing a professional license, removes an incentive for students to repay their student loans. For-profit institutions have an obligation to ensure that their students are in compliance in paying their loans.

OTHER: The Department of Licensing does not currently regulate many licensees with this status.

Persons Testifying: PRO: Representative Tina Orwall, Prime Sponsor; Becky Thompson, Washington Student Achievement Council; Teri Randall, citizen; Julia Kellison, Northwest Justice Project; Annabell Joya, Columbia Legal Services; Benjamin Huff, The Washington Student Association/ The Evergreen State College; Anna Nepomuceno, Associated Students University of WA Tacoma.

CON: Patrick Davis, Paroba College of Cosmetology.

OTHER: Stephanie Sams, Department of Licensing.

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