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AB-424 Private Student Loan Collections Reform Act: collection actions. (2021-2022)

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Assembly Bill No. 424

CHAPTER 559

An act to add Title 1.6C.15 (commencing with Section 1788.200) to Part 4 of Division 3 of the Civil Code, relating to student loans.

[Approved by Governor October 06, 2021. Filed with Secretary of State October 06, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 424, Stone. Private Student Loan Collections Reform Act: collection actions.

Existing law, the Student Loan Servicing Act, provides for the licensure, regulation, and oversight of student loan servicers by the Commissioner of Financial Protection and Innovation, who is the head of the Department of Financial Protection and Innovation. The act prohibits a person from engaging in the business of servicing a student loan in this state without a license, unless the person falls within certain exceptions.

Existing law, the Student Borrower Bill of Rights, imposes requirements on a student loan servicer, including, among others, the timely posting, processing, and crediting of student loan payments, and applying overpayments consistent with the best financial interest of a student loan borrower. Existing law also prohibits a student loan servicer from engaging in unfair or deceptive practices, or abusive acts or practices in connection with the servicing of a student loan, and authorizes a person to bring an action for actual damages, injunctive relief, restitution, punitive damages, attorney's fees, and other relief, including treble damages in certain circumstances.

This bill would enact the Private Student Loan Collections Reform Act, which would become operative July 1, 2022. The act would prohibit a private education lender or a private education loan collector, as defined, from making any written statement to a debtor in an attempt to collect a private education loan unless the private education lender or private education loan collector possesses certain information regarding the loan and provides this information to the debtor, as specified. The act would require all settlement agreements between a private education lender or private education loan collector and a debtor to be documented in open court or otherwise reduced to writing, as specified. The act would also require a private education lender or private education loan collector that accepts a payment as payment in full or as a full and final compromise of a private education loan, within 30 calendar days, to provide specified information to the debtor regarding the loan.

The act would also prohibit a private education lender or private education loan collector from bringing suit or initiating an arbitration or other legal proceeding to collect a private education loan if the applicable statute of limitations on the claim has expired. The act would require a complaint, with respect to an action brought by a private education lender or private education loan collector to collect a private education loan, to contain specified information and would prohibit a default or other judgment from being entered against a defendant unless documents submitted to the court establish the facts alleged. The act would require a plaintiff seeking an exemption, as an exempt entity, from those requirements to attach to the complaint a declaration or affidavit, signed under penalty of perjury, stating certain information. By expanding the scope of the crime of perjury, the bill would create a state-mandated local program. The act would also authorize a person to bring a cause of action against a creditor,

private education lender, or private education loan collector for violating the act for actual damages, statutory damages, restitution, and other specified relief.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Title 1.6C.15 (commencing with Section 1788.200) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.6C.15. Private Student Loan Collections Reform Act

1788.200. This title shall be known and may be cited as the Private Student Loan Collections Reform Act.

1788.201. For purposes of this title, the following definitions apply:

- (a) "Borrower" or "student loan borrower" means a person who has received or agreed to pay a private education loan.
- (b) "Consumer report" and "consumer reporting agency" shall each have the same meaning that these terms have under the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.).
- (c) (1) "Cosigner" means any individual who is liable for the obligation of another without compensation, regardless of how the individual is designated in the contract or instrument with respect to that obligation, including an obligation under a private education loan extended to consolidate a borrower's preexisting private education loans, and shall include any person whose signature is requested as a condition to grant credit or to forbear on collection.
 - (2) "Cosigner" does not include a spouse of an individual described in paragraph (1), the signature of whom is needed to perfect the security interest in a loan.
- (d) "Creditor" means any of the following:
 - (1) The original creditor, where ownership of a private education loan has not been sold, assigned, or transferred.
 - (2) The person or entity that owned the private education loan at the time the private education loan defaulted, even if that person or entity did not originate the private education loan, and where such a private education loan has not subsequently been sold, transferred, or assigned.
 - (3) A person or entity that purchased a defaulted private education loan, whether it collects the private education loan itself or hires a third party for collection, or hires an attorney for collection litigation.
- (e) "Debtor" means a borrower, cosigner, or other person that owes or is alleged to owe an unpaid amount on a private education loan.
- (f) (1) "Exempt entity" means an entity that meets both of the following requirements:
 - (A) It is a depository institution as defined in Section 1420 of the Financial Code.
 - (B) It, together with its affiliates, will be, in the aggregate, a plaintiff in 35 or fewer private student loan collection actions in the current calendar year. Private education loans assigned to a third party for the purposes of collection shall count towards the numerical limit set forth in this subparagraph.
 - (2) For purposes of this subdivision, an entity is an "affiliate" of another specified entity if it directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other specified entity.
- (g) "Original creditor" means the private education lender identified in a promissory note, loan agreement, or loan contract entered into with a student loan borrower or cosigner.
- (h) "Private education lender" means either of the following:
 - (1) Any person or entity engaged in the business of securing, making, or extending private education loans.
 - (2) Any holder of a private education loan.

(i) "Private education loan" means an extension of credit that meets all of the following conditions:

- (1) Is not made, insured, or guaranteed under Title IV of the Higher Education Act of 1965 (20 U.S.C. Sec. 1070 et seq.).
- (2) Is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends.
- (3) Does not include open-end credit or any loan that is secured by real property or a dwelling.
- (4) Does not include an extension of credit in which the covered educational institution is the original creditor if either:
 - (A) The term of the extension of credit is 90 days or less.
 - (B) An interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

(j) "Private education loan collection action" means any suit, arbitration, or other legal proceeding in which a claim is asserted to collect a private education loan.

(k) "Private education loan collector" means a person, other than a private education lender, collecting or attempting to collect on a defaulted private education loan.

1788.202. (a) A private education lender or a private education loan collector shall not make any written statement to a debtor in an attempt to collect a private education loan unless the private education lender or private education loan collector possesses the following information:

- (1) The name of the owner of the private education loan.
- (2) The creditor's name at the time of default, if applicable.
- (3) The creditor's account number used to identify the private education loan at the time of default, if the original creditor used an account number to identify the private education loan at the time of default.
- (4) The amount due at default.
- (5) An itemization of interest, if any, that has accrued on the private education loan.
- (6) An itemization of fees, if any, claimed to be owed on the private education loan and whether those fees were imposed by the original creditor or any subsequent owners of the private education loan.
- (7) The date that the private education loan was incurred.
- (8) The date of the first partial payment or the first day that a payment was missed, whichever is earlier, that precipitated default.
- (9) The date and amount of the last payment, if applicable.
- (10) Any payments, settlement, or financial remuneration of any kind paid to the creditor by a guarantor, surety, or other party not obligated on the loan as compensation under a separate contract that provides coverage for financial losses incurred as a result of default, if applicable.
- (11) The names of all persons or entities that owned the private education loan after the time of default, if applicable, and the date of each sale or transfer.
- (12) A copy of the self-certification form and any other "needs analysis" conducted by the original creditor prior to origination of the loan.
- (13) Documentation establishing that the creditor is the owner of the specific individual private education loan at issue. If the private education loan was assigned more than once, the creditor shall possess each assignment or other writing evidencing the transfer of ownership of the specific individual private education loan to establish an unbroken chain of ownership, beginning with the original creditor to the first subsequent creditor and each additional creditor. Each assignment or other writing evidencing transfer of ownership or the right to collect shall contain the original creditor's account number (redacted for security purposes to show only the last four digits) of the private education loan purchased or otherwise assigned, the date of purchase and assignment, and shall clearly show the borrower's correct name associated with the original account number. The assignment or other writing attached shall be that by which the creditor or other assignee acquired the private education loan, not a document prepared for litigation.

(14) A copy of all pages of the contract, application, or other documents evidencing the debtor's liability for the private education loan, stating all terms and conditions applicable to the private education loan.

(15) A list of all collection attempts made in the last 12 months, including date and time of all calls and written communications.

(16) A statement as to whether the creditor is willing to renegotiate the terms of the private student loan.

(17) Copies of all written settlement communications made in the last 12 months, or, in the alternative, a statement that the creditor has not attempted to settle or otherwise renegotiate the debt prior to suit.

(18) A statement as to whether the private education loan is eligible for an income-based repayment plan.

(b) (1) In addition to any other information required under applicable federal or state law, a private education lender or private education loan collector shall provide the information set forth in subdivision (a) in the first written collection communication with a debtor after the first of either of the following:

(A) Default and acceleration.

(B) A period of 12 consecutive months of default.

(2) A private education lender or private education loan collector shall provide the information set forth in subdivision (a) to the debtor upon the debtor's request if both of the following are true:

(A) An event described in subparagraph (A) or (B) of paragraph (1) has occurred.

(B) The debtor has not requested or received the information set forth in subdivision (a) within the previous 12 months.

1788.203. (a) All settlement agreements between a private education lender or private education loan collector and a debtor shall be documented in open court or otherwise reduced to writing. The private education lender or private education loan collector shall ensure that a copy of the written agreement is provided to the debtor.

(b) A private education lender or private education loan collector that accepts a payment as payment in full, or as a full and final compromise of a private education loan, shall provide, within 30 calendar days, a final statement that shall clearly and conspicuously show the amount and date paid, the name of the entity paid, the current account number, the name of the private education lender or private education loan collector, the account number issued by the private education lender or private education loan collector, the name of the owner of the private education loan, and that a zero balance is owing. The statement may be provided electronically if the parties agree.

1788.204. A private education lender or private education loan collector shall not bring suit or initiate an arbitration or other legal proceeding to collect a private education loan if the applicable statute of limitations for the private education lender's or private education loan collector's claim has expired.

1788.205. In an action brought by a private education lender or private education loan collector to collect a private education loan:

(a) The complaint shall allege all of the following:

(1) The information required by paragraphs (1) to (11), inclusive, of subdivision (a) of Section 1788.202.

(2) That the applicable statute of limitations has not expired.

(3) That the plaintiff has complied with Section 1788.202.

(b) Copies of the documents required by paragraphs (12) to (14), inclusive, of subdivision (a) of Section 1788.202 shall be attached to the complaint.

(c) The requirements of this title shall not be deemed to require the disclosure in public records of personal, financial, or medical information, the confidentiality of which is protected by any state or federal law.

(d) This section does not apply to a plaintiff that attaches to the complaint a declaration or affidavit pursuant to Section 2015.5 of the Code of Civil Procedure that is signed by a natural person and states all of the following:

(1) That the plaintiff is an exempt entity.

(2) The category in subdivision (a) of Section 1420 of the Financial Code under which the plaintiff falls.

(3) The name and title of the signer.

(4) That the signer has been authorized by the entity to make the affidavit or declaration.

1788.206. (a) In an action initiated by a private education lender or private education loan collector, no default or other judgment may be entered against a defendant unless documents are submitted by the plaintiff to the court to establish the facts required to be alleged by paragraphs (1) and (2) of subdivision (a) of Section 1788.205. The documents shall be properly authenticated and each shall be in a form that would be admissible as a business record under Section 1271 of the Evidence Code.

(b) In an action initiated by a private education lender or private education loan collector, no default or other judgment may be entered against a defendant unless copies of the documents described in subdivision (b) of Section 1788.205 have been submitted by the plaintiff to the court. These documents shall be properly authenticated and each shall be in a form that would be admissible as a business record under Section 1271 of the Evidence Code.

(c) In any action on a private education loan, if a plaintiff seeks a default judgment and has not complied with the requirements of this title, the court shall not enter a default judgment for the plaintiff and may, in its discretion, dismiss the action.

(d) Except as provided in this title, this section is not intended to modify or otherwise amend the procedures established in Section 585 of the Code of Civil Procedure.

(e) This section does not apply to a plaintiff that attaches to the complaint a declaration or affidavit pursuant to Section 2015.5 of the Code of Civil Procedure that is signed by a natural person and states all of the following:

(1) That the plaintiff is an exempt entity.

(2) The category in subdivision (a) of Section 1420 of the Financial Code under which the plaintiff falls.

(3) The name and title of the signer.

(4) That the signer has been authorized by the entity to make the affidavit or declaration.

1788.207. Notwithstanding Section 473.5 of the Code of Civil Procedure, if service of a summons has not resulted in actual notice to a person in time to defend an action brought by a private education lender or a private education loan collector and a default or default judgment has been entered against the person in the action, the person may serve and file a notice of motion and motion to set aside the default or default judgment and for leave to defend the action utilizing the procedures set forth in Section 1788.61.

1788.208. (a) A person may bring a cause of action against a creditor, private education lender, or private education loan collector for a violation of any provision of this title in order to recover or obtain any of the following:

(1) Damages in an amount equal to the sum of the following:

(A) Any actual damages sustained by that person as a result of the violation.

(B) Statutory damages in an amount as the court may allow, which shall not be less than five hundred dollars (\$500) per violation.

(2) Damages pursuant to Section 3294.

(3) An order vacating any default judgment entered against that person.

(4) Restitution of all moneys taken from or paid by that person after a default judgment was entered in favor of the private education lender or private education loan collector.

(5) An order directing the private education lender or private education loan collector to do one or more of the following:

(A) Request that a consumer reporting agency correct a consumer report that it issues.

(B) Request that a consumer reporting agency remove derogatory information furnished to it after default.

(C) Furnish correct information to a consumer reporting agency.

(6) Any other relief that the court deems proper.

(b) In the case of a class action, a defendant that violates any provision of this title shall be liable for any statutory damages for each named plaintiff as provided in subparagraph (B) of paragraph (1) of subdivision (a). If the court finds that the defendant engaged in a pattern and practice of violating any provision of this title, the court may award additional damages to the class in an amount not to exceed the lesser of five hundred thousand dollars (\$500,000) or 1 percent of the net worth of the defendant.

(c) (1) In the case of any successful cause of action under this section, the court shall award costs of the action, together with reasonable attorney's fees as determined by the court.

(2) Reasonable attorney's fees may be awarded to a prevailing defendant upon a finding by the court that the plaintiff's prosecution of the cause of action was not in good faith.

(d) A private education lender or private education loan collector shall have no civil liability for damages under this section if the private education lender or private education loan collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, and occurred notwithstanding the maintenance of procedures reasonably adopted to avoid any error.

(e) A cause of action to enforce any liability created by this title shall be brought within one year from the date of the discovery by the plaintiff of the last violation, or, in the event a default judgment is entered against the debtor, one year from the date the borrower first receives a writ, notice, or order under Division 1 (commencing with Section 680.010) or Division 2 (commencing with Section 695.010) of Title 9 of Part 2 of the Code of Civil Procedure, whichever is later.

1788.209. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

1788.210. The provisions of this title are severable. If any provision of this title or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

1788.211. This title shall become operative on July 1, 2022.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.