

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 866 (Ortega)
Version: February 19, 2025
Hearing Date: July 15, 2025
Fiscal: Yes
Urgency: No
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SUBJECT

Student loan servicing

DIGEST

This bill clarifies that a student loan servicer is a person for purposes of the Unfair Competition Law (UCL). This bill clarifies that a student loan is a debt and a transaction giving rise to a student loan is a consumer credit transaction for purposes of the Rosenthal Fair Debt Collection Practices Act (Rosenthal Act).

EXECUTIVE SUMMARY

The Rosenthal Act establishes a set of basic norms that debt collectors must adhere to when going about their work. Without excusing anyone from paying what they rightly owe, Rosenthal requires debt collectors to treat debtors civilly and honestly throughout the process. It prohibits things like threatening debtors, trying to trick them, humiliating them in front of others, or calling them up repeatedly in the middle of the night to demand payment.

Unfair business practices encompass fraud, misrepresentation, and oppressive or unconscionable acts or practices by businesses, often against consumers. In California, individuals and specified governmental agencies are authorized to bring civil actions for unfair competition and to recover civil penalties, restitution, and injunctive relief pursuant to the UCL, Business and Professions Code Section 17200 et seq., as provided.

In response to concerns about misconduct in the student loan servicing industry, this bill clarifies that a student loan servicer is a person for purposes of the UCL. It also clarifies that a student loan is a “debt” and a transaction giving rise to a student loan is a “consumer credit transaction” for purposes of the Rosenthal Act. This bill is supported by the Consumer Federation of California. No timely opposition has been received by this Committee. The bill passed out of the Senate Banking and Financial Institutions Committee on a 7 to 0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the UCL, which provides a statutory cause of action for any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising, including over the internet. (Bus. & Prof. Code § 17200 et seq.)
- 2) Defines “unfair competition” to mean and include any unlawful, unfair, or fraudulent business act or practice and any unfair, deceptive, untrue, or misleading advertising, and any act prohibited by the False Advertising Law, Business and Professions Code section 17500 et seq. (Bus. & Prof. Code § 17200.)
- 3) Provides that any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. (Bus. & Prof. Code § 17203.)
- 4) Requires that actions for relief pursuant to the UCL be prosecuted exclusively in a court of competent jurisdiction and only by the following:
 - a) the Attorney General;
 - b) a district attorney;
 - c) a county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance;
 - d) a city attorney of a city having a population in excess of 750,000;
 - e) a county counsel of any county within which a city has a population in excess of 750,000;
 - f) a city attorney in a city and county;
 - g) a city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of a board, officer, person, corporation, or association with the consent of the district attorney; or
 - h) a person who has suffered injury in fact and has lost money or property as a result of the unfair competition. (Bus. & Prof. Code § 17204.)
- 5) Provides that any person who engages, has engaged, or proposes to engage in unfair competition is liable for a civil penalty not to exceed \$2,500 for each violation. (Bus. & Prof. Code § 17206.)
- 6) Establishes the Rosenthal Act to regulate the collection of consumer debt, generally prohibiting deceptive, dishonest, unfair, and unreasonable debt collection practices by debt collectors and regulates the form and content of communications by debt collectors to debtors and others. (Civ. Code §§ 1788 et seq.)

- 7) Defines, for purposes of the Rosenthal Act, the following terms:
 - a) "Debt" means money, property, or their equivalent that is due or owing or alleged to be due or owing from a natural person to another person.
 - b) "Consumer debt" and "consumer credit" means money, property, or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. The term "consumer debt" includes a mortgage debt.
 - c) "Consumer credit transaction" means a transaction between a natural person and another person in which property, services, or money is acquired on credit by that natural person from the other person primarily for personal, family, or household purposes.
 - d) "Debt collector" means any person who, in the ordinary course of business, regularly, on behalf of that person or others, engages in debt collection. (Civ. Code § 1788.2.)
- 8) Prohibits, pursuant to the Rosenthal Act, a debt collector from the following conduct or practices, among others, when collecting or attempting to collect a consumer debt:
 - i. The use or threat of physical force or violence. (Civ. Code § 1788.10.)
 - ii. Threats and communications that rely on false representations. (Civ. Code §§ 1788.10 and 1788.13.)
 - iii. Using obscene or profane language. (Civ. Code § 1788.11.)
 - iv. Communicating with the debtor with such frequency as to be unreasonable, and to constitute harassment of the debtor under the circumstances. (Civ. Code § 1788.11.)
 - v. Communicating unnecessarily about the debtor's debt with the debtor's employer or extended family. (Civ. Code § 1788.12.)

This bill:

- 1) Provides that a student loan servicer is a person for purposes of the UCL.
- 2) Provides that a student loan is a debt for purposes of the Rosenthal Act.
- 3) Provides that a transaction giving rise to a student loan is a consumer credit transaction for purposes of the Rosenthal Act.

COMMENTS

1. The Rosenthal Fair Debt Collection Practices Act

Since 1977, the Rosenthal Act has protected debtors against the most egregious tactics that creditors might otherwise be tempted to utilize while pursuing their money. The

Rosenthal Act prohibits creditors from engaging in deceptive, harassing, humiliating, threatening, or otherwise unreasonable conduct while seeking payment. For example, under the Rosenthal Act, a creditor cannot try to extract payments by waking the debtor up in the middle of the night with repeated phone calls; trying to embarrass the debtor in front of family members or their employer; threatening to have the debtor sent to jail; cursing at the debtor; or telling the debtor that the creditor will drop the matter in exchange for a payment when the creditor has no actual intention of doing so. Nothing in the Rosenthal Act excuses a debtor from having to pay, but the Rosenthal Act does demand that creditors treat the people who owe them money with honesty and civility.

The Rosenthal Act applies to “consumer debt,” which is defined as “money, property, or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction.” (Civ. Code § 1788.2(f).) “Debt” means money, property, or their equivalent that is due or owing or alleged to be due or owing from a natural person to another person. “Consumer credit transaction” is defined as “a transaction between a natural person and another person in which property, services or money is acquired on credit by that natural person from such other person primarily for personal, family, or household purposes.” (Civ. Code § 1788.2(e).)

2. California’s consumer protection laws

The Legislature has long considered consumer protection to be a matter of high importance. State law is replete with statutes aimed at protecting California consumers from unfair, dishonest, or harmful market practices. These consumer-protection laws authorize consumers to enforce their own rights and seek remedies to make them whole.

The UCL (Bus. & Prof. Code § 17200) provides remedies for “anything that can properly be called a business practice and that at the same time is forbidden by law.” (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180 [citations omitted].) The UCL provides that a court “may make such orders or judgments . . . as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.” (Bus. & Prof. Code § 17203; *see also Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1146 [“An order for restitution, then, is authorized by the clear language of the [UCL.”].) The law also permits courts to award injunctive relief and, in certain cases, to assess civil penalties against the violator. (Bus. & Prof. Code §§ 17203, 17206.)

3. Protecting student loan borrowers from abusive practices

Reports of student loan servicer misconduct have skyrocketed in recent years. An investigation into one infamous servicer highlights some of the issues:

The Higher Education Loan Authority of the State of Missouri – better known as MOHELA – was created in 1981 by the Missouri legislature “to assure that all eligible postsecondary education students have access to student loans” and to support capital projects and technological innovation at Missouri colleges and universities. Despite its legal independence, MOHELA is arguably most infamous for its central role in *Biden v. Nebraska*, in which the U.S. Supreme Court determined that the State of Missouri had standing to challenge President Biden’s debt relief plan because of potential harm to MOHELA, leading to the denial of critical debt relief to 40 million federal student loan borrowers. . .

As the sole servicer for the PSLF program, MOHELA’s servicing failures particularly harm public service workers. The obtained documents uncover that MOHELA’s processing of PSLF has prevented hundreds of thousands of borrowers from progressing towards relief. Specifically:

- MOHELA allowed the PSLF backlog to explode, with over 800,000 unprocessed forms;
- MOHELA provided borrowers with incorrect payment counts; and
- MOHELA is denying PSLF credit to public service workers with eligible employment.

Troublingly, the documents expose MOHELA’s potential financial windfall for making improper denials: MOHELA is paid for each processed application – for the wrongful denial and then again for the approval – a backwards incentive. MOHELA’s customer service problems – including the “call deflection” scheme – exacerbated problems for both public service workers and vulnerable, often low-income, borrowers alike. Evidence showed that:

- MOHELA borrowers were unable to reach customer service representatives to address errors;
- MOHELA miscalculated borrowers’ payment amounts;
- MOHELA lost borrowers’ payments, refunds, and records; and
- MOHELA misinformed borrowers about their options.

In all, nearly 3.5 million student loan borrowers serviced by MOHELA have experienced a documented servicing failure since loan payments resumed in September 2023 after a three-and-a-half-year-long pause on bills and interest charges.¹

¹ *The Mohela Papers: The Rise of a Student Loan Servicing Giant and the Fall of the Student Loan System* (February 2024) Student Borrower Protection Center & American Federation of Teachers, <https://www.mohelapapers.org/the-archives>. All internet citations current as of June 26, 2025.

In its annual Consumer Financial Protection Bureau (CFPB) Student Loan Ombudsman report, the CFPB catalogues many of the harms:

During the 2023-2024 Award Year, the student loan system experienced many transformations and challenges. In October 2023, 28 million federal student loan borrowers returned to repayment after an unprecedented payment pause. Throughout the year, the Department of Education made several attempts to correct servicing errors and enact systemic reforms. In July 2024, legal challenges halted the implementation of certain repayment plans.

Amid these developments, student loan servicers routinely made blunders, oversights, and errors that harmed millions of borrowers and likely cost them millions of dollars. Servicing mistakes like these are nothing new – they have persisted for well over a decade and have been thoroughly documented in prior CFPB Student Loan Ombudsman reports and other publications. In complaints submitted to the CFPB during the Award Year, thousands of borrowers described experiencing consequential harms because of their servicers' mistakes.²

The author highlights another infamous actor in this space and explains the need for the bill:

In 2022, the Attorney General was able to return \$11.5 million to California student loan borrowers, victims of widespread misconduct by the massive student loan servicer Navient, and to cancel \$261 million in student debt. AB 866 makes clear that all student loan servicers, regardless of their affiliation with other states, cannot engage in misconduct to defraud Californians struggling under ballooning student loan debt. AB 866 will make sure that all student loan borrowers, regardless of who services their loans, are protected by California's robust consumer protection laws and that the Attorney General, along with other public prosecutors, can enforce those laws against those servicers.

The bill accomplishes this by clarifying that a student loan servicer is a person for purposes of the UCL and that a student loan is a "debt" and a transaction giving rise to a student loan is a "consumer credit transaction" as those terms are used in the Rosenthal Act.

² *Annual Report of the CFPB Student Loan Ombudsman* (November 2024) CFPB, https://files.consumerfinance.gov/f/documents/cfpb_2024-annual-student-loan-ombudsmans-report_2024-11.pdf.

The Consumer Federation of California writes in support:

While CFPB has continued to identify significant and ongoing violations of consumer protection laws, the new federal administration's efforts to dismantle CFPB (as well as the federal Department of Education) and potentially stop efforts to rein in bad practices by student loan servicers necessitates a response by California to ensure that California law effectively protects student borrowers from misconduct by these servicers.

AB 866 protects student borrowers from such misconduct by removing any uncertainty regarding the Attorney General's ability to use California's Unfair Competition Law (UCL) and our state's Rosenthal Fair Debt Collection Practices Act against servicers of federal student loans, as well as servicers established as agencies or instrumentalities of a state, in the same way that the Attorney General is currently able to bring actions against for-profit and nonprofit entities that service private student loans. Such clarification is necessary to ensure that servicers are held accountable for servicing failures that can cause significant financial distress and result in long-term consequences for California student borrowers, including borrowers losing eligibility for mortgages and homeownership, foregoing saving for retirement or starting a family, and even putting some borrowers at risk of homelessness.

SUPPORT

Consumer Federation of California
The Institute for College Access and Success

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 825 (authorizes the Department of Financial Protection and Innovation (DFPI) to enforce prohibitions against unlawful, unfair, deceptive, or abusive acts or practices against specified entities acting under the authority of certain licenses, certificates, or charters issued by DFPI. SB 825 is currently in the Assembly Appropriations Committee.

Prior Legislation:

SB 908 (Wieckowski, Ch. 163, Stats. 2020) established the Debt Collection Licensing Act, which provides for licensure, regulation, and oversight of debt collectors by the Department of Financial Protection and Innovation.

SB 187 (Wieckowski, Ch. 545, Stats. 2019) added mortgage debt to the definition of consumer debt covered by the Rosenthal Act and removed the exception for an attorney or counselor at law from the definition of debt collector under the Rosenthal Act.

AB 969 (Papan, Ch. 319, Stats. 1999) incorporated some components of the federal Fair Debt Collection Practices Act, including its remedies provisions, into the Rosenthal Act, with specified exceptions.

SB 237 (Robbins, Ch. 907, Stats. 1977) enacted the Rosenthal Fair Debt Collection Practices Act.

PRIOR VOTES:

Senate Banking and Financial Institutions Committee (Ayes 7, Noes 0)

Assembly Floor (Ayes 79, Noes 0)

Assembly Appropriations Committee (Ayes 14, Noes 0)

Assembly Banking and Finance Committee (Ayes 9, Noes 0)

Assembly Judiciary Committee (Ayes 12, Noes 0)
