

Date of Hearing: April 1, 2014

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Das Williams, Chair

AB 1927 (Frazier) – As Introduced: February 19, 2014

[Note: This bill is doubled referred to the Assembly Banking and Finance Committee and will be heard as it relates to issues under its jurisdiction.]

SUBJECT: Student financial aid: debit cards.

SUMMARY: Requires the Board of Trustees (BOT) of the California State University (CSU) and the Board of Governors (BOG) of the California Community Colleges (CCC) and requests the Regents of the University of California (UC) and the governing bodies of accredited private non-profit and for-profit postsecondary educational institutions, to adopt policies for negotiating contracts between their postsecondary educational institutions and banks and other financial institutions to disburse students' financial aid awards and other refunds onto a debit card, prepaid card, or a preloaded card. Specifically, this bill:

- 1) Requires the CSU BOT and the CCC BOG and requests the Regents of the UC and the governing bodies of accredited private non-profit and for-profit postsecondary educational institutions, to adopt policies for negotiating contracts between their postsecondary educational institutions and banks and other financial institutions to disburse students' financial aid awards and other refunds onto a debit card, prepaid card, or a preloaded card as best serves the needs of the students.
- 2) Specifies that the policies adopted shall be consistent with federal law, ensuring that contracts between postsecondary educational institutions and banks or other financial institutions to disburse a student's financial aid award and other refunds onto a debit card, prepaid card or preloaded card do at least all of the following:
 - a) Prohibit the revenue sharing between a postsecondary educational institution and banks or other financial institutions;
 - b) Prohibit the sale of private information that the student or the postsecondary educational institution provides the bank or other financial institution;
 - c) Prohibit the debit card, prepaid card, or preloaded card use from imposing fees;
 - d) Prohibit the debit card, prepaid card, or preloaded card from being cobranded, which means including the logo of the postsecondary educational institution;
 - e) Ensure that the student does not incur any cost in opening the account or initially receiving the debit card, prepaid card, or preloaded card;
 - f) Ensure that the student has convenient access to a branch office of the bank or an automated teller machine (ATM) of the bank in which the account was opened or of another bank, so that the student does not incur any cost in making withdrawals from that office or those ATMs and, the branch office or ATMs must be located on the

postsecondary educational institution's campus, in an institutionally owned or operated facility, or immediately adjacent to and accessible from the campus;

- g) Ensure that the debit card, prepaid card, or preloaded card can be widely used; and,
- h) Not market or portray the account or debit card, prepaid card, or preloaded card as a credit card or credit instrument, or subsequently convert the account or debit card, prepaid card, or preloaded card to a credit card or credit instrument.

EXISTING LAW:

- 1) Establishes rules (via federal regulations) for the disbursement of federal financial aid to students. Said rules authorize a school to establish a policy requiring its students to provide bank account information, or open an account at a bank of their choosing as long as this policy does not delay the disbursement of federal student aid funds to students. Should a school open a bank account on behalf of the student, the rules require that schools comply with conditions related to consent, notice, disclosure and costs to open or transact on the account and additionally require that the school ensure that the student has convenient access to a branch office or ATMs of the bank so that the student does not incur any cost in making cash withdrawals. Additionally, the regulations require that the branch office or ATMs be located on the institution's campus, in institutionally-owned or operated facilities, or immediately adjacent to and accessible from the campus. These rules also include conditions that must be met if a school uses a store value card or prepaid debit card (34 California Code of Federal Regulations (CFR) § 668.164(c)(3)).
- 2) Allows schools to contract with servicers for the administration of any aspect of the school's participation in Title IV programs and specifies that a school may accept the standard contract terms and conditions in a servicer's proposal for delivering credit balances or negotiate the terms and conditions to meet the specific needs of the school or its students (34 CFR § 668.25).
- 3) Defines the term "debit card" as an accepted card or other means of access to a debit cardholder's account that may be used to initiate electronic funds transfers and may be used without unique identifying information such as a personal identification number to initiate access to the debit cardholder's account (Civil Code [CIV] § 1748.30).
- 4) Limits a debit cardholder's liability for unauthorized use of a debit card (CIV § 1748.31).
- 5) Provides for a variety of student financial aid programs including the Cal Grant programs and the CCC Board of Governors fee waiver program. Current law requires that eligibility for a Cal Grant and the determination of financial need be accomplished using the Free Application for Federal Student Aid (FAFSA), and that this application be used for all programs funded by the state or a public institution of post-secondary education as well as all federal programs administered by a postsecondary educational institution. Current law makes an exception to this requirement for the BOG fee waiver program which is authorized to use a simplified application designed for that sole purpose (Education Code § 69432.9 and § 69433).

FISCAL EFFECT: Unknown

COMMENTS: Background. When students receive financial aid, whether it is in the form of a scholarship, grant, or student loan, schools apply that money to college costs then disburse the rest to the student. Instead of disbursing remaining aid funds by check, many campuses are funding financial aid awards through special debit cards that sometimes double as student identification cards.

Recent reports and media attention have raised concerns about whether the terms and conditions of the debit cards that servicers use to deliver financial aid credit balances to students are in the best interest of students.

Title IV. Title IV of the Higher Education Act (HEA) of 1965, as amended, authorizes various programs that provide financial aid to eligible postsecondary students enrolled in eligible programs at participating schools. Federal Student Aid (FSA), an Office of the U. S. Department of Education (USDE), is responsible for administering the Title IV programs, including overseeing the activities carried out by schools, servicers and other entities involved in administering the programs. The Title IV programs include a variety of loans, grants and Federal Work-Study.

Need for the bill. According to the author, as college budgets have shrunk, colleges have partnered with financial firms to disburse student financial aid – oftentimes in the form of debit and prepaid cards. While these partnerships can lower administrative costs for colleges and have the potential to be beneficial to students, their value has been called into question in instances where students end up bearing the cost directly through poor customer service and unnecessarily high fees that eat into their already limited financial aid. The author states, "Existing federal law requires minimal protections for students and does not address issues that have been particularly problematic. Colleges and universities must set in place regulations for campus debit card programs to ensure that students are protected in these arrangements."

According to a May 2012 U. S. Public Interest Research Group (PIRG) Educational Fund report entitled, "The Campus Debit Card Trap: Are Bank Partnerships Fair to Students?" - issuing debit cards for disbursing funds may be good for colleges, but the study argues that cash-strapped students absorb the costs. The PIRG study finds that some debit cards come with transaction fees as high as 50 cents per swipe, \$38.00 per overdraft and \$10.00 for inactivity after six months without use. The PIRG study also finds that students do not fully realize what they are signing up for when they elect to receive their financial aid award via debit card. Additionally, the PRIG study finds that debit card contracts have been controversial at some postsecondary campuses; and that it is hard to obtain contracts between the postsecondary institutions and the banks and other financial institutions when seeking to disburse students' financial aid awards via debit cards.

Recent federal actions. The USDE Office of Inspector General March 2014 report entitled, "Third-Party Servicer Use of Debit Cards to Deliver Title IV Funds," reveals their findings regarding the use of debit cards to deliver Title IV funds to students. The objectives of their review was to: 1) identify the methods, terms and conditions, and time frames for delivering Title IV funds to students; 2) determine what personal student information is provided by schools or collected by servicers during the Title IV funds delivery process; 3) identify school and servicer procedures for addressing student complaints about the use of debit cards to deliver Title IV funds; and, 4) determine how FSA monitors schools' and servicers' delivery of Title IV funds through the use of debit cards to protect students from inappropriate practices. The Inspector

General determined that the USDE needs to take action to better ensure that the interests of students are being served when schools use servicers to deliver credit balances.

The Inspector General's report comes as the USDE is considering new debit card rules as part of a wide-ranging rule making session on federal student aid.

The U. S. Government Accountability Office (GAO) issued a report in February 2014, entitled, "College Debit Cards – Actions Needed to Address ATM Access, Student Choice and Transparency" and found that at least 852 schools, or 11% of U.S. colleges and universities, have agreements to provide debit or prepaid card services to their students as of July 2013, and most offered students the ability to receive federal student aid and other payments on a card. These schools were disproportionately large; their enrollments constituted about 40% of all postsecondary students. However, the percentage of students enrolled in their schools' college card programs was unknown. The GAO report also found that in the majority of agreements, the schools also outsourced to their card provider the process for paying financial aid and other funds via college cards and other methods. Some schools also used college cards as student identification. Additionally, although schools cannot require students to use college cards, the GAO report raised concerns about the extent to which students have been able to make fully informed choices about whether to enroll in the debit or prepaid cards their schools offer. The GAO report contends that educational guidance on college cards does not currently address the marketing of the cards or the extent to which schools must inform students about financial aid payment options, although schools are required to inform students of the terms and conditions of college cards before an account is opened.

Last fall, USDE issued its Notice of Proposed Rulemaking (NPRM) in order to create a negotiated rulemaking committee and tasked the committee to review many elements of student financial aid, including, but not limited to, the cash management of funds provided under Title IV programs, including the use of debit cards and the handling of Title IV credit balances. This recently formed committee is still meeting; to date, findings, declarations, and recommendations have not been disclosed.

According to the USDE Office of Postsecondary Education, the first session of the committee was a listening session where negotiators provided their input in response to the Issue Papers provided by the USDE (under Session 1 Materials on the website). During the second session, which took place at the end of March, the negotiators discussed draft regulatory language provided by the USDE. Once provided to the committee, that draft language and other materials considered by the committee, will be posted to the website. Most likely, it will not be until the final session, which is scheduled to take place at the end of April, when the committee will vote on the draft language that has been developed to determine if there is consensus on it (meaning that there is no dissent by any member of the negotiating committee).

To note, if consensus is achieved, the USDE uses that regulatory language in its NPRM. If not, the USDE may use regulatory language developed during the negotiations as the basis for its NPRM, or develop new regulatory language for all or a portion of its NPRM. To track the progress of the committee, on the internet, go to:

<http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html>.

Committee consideration. With the USDE in the process of reviewing their regulations concerning the disbursement of Title IV funds to students, should our state act on this issue prior to obtaining updated guidelines and regulations from the USDE?

Other efforts. The 77th Oregon Legislative Assembly is currently considering House Bill 4102; which prohibits public or private post-secondary educational institutions from entering into contracts with financial firms to provide disbursement and management services of student financial aid funds unless the following requirements are met: 1) clear and concise disclosure of fee schedules before the student agrees to use an account offered by third-party financial firm; 2) explanation of all methods available to students to access financial aid; 3) ability for students to choose to receive financial aid through a paper check or electronic funds transfer; 4) require paper checks be sent or electronic fund transfers be initiated, at no cost to the student, within three business days of the students' request; 5) prohibit charging students fees per transaction for making a debit or similar transaction using a debit or similar card provided by the third-party financial firm; and, 6) prohibitive provision allowing revenue sharing.

Related legislation. SB 845 (Correa), which is pending a hearing date in the Senate Appropriations Committee, would require the CCC BOG and the CSU Trustees, and would request the UC Regents and each governing body of an accredited private postsecondary educational institution, to develop, in consultation with stakeholders, one or more model contracts for use at their respective systems for the disbursement of a financial aid award, scholarship, campus-based aid award, or school refund on a debit, prepaid, or preloaded card.

SB 595 (Ron Calderon), Chapter 217, Statutes of 2013, prohibited any campus of the CCC or the CSU from entering into a contract with any entity on or after January 1, 2014, that requires students to open an account with the entity as a condition of the student receiving a financial aid disbursement, and requires that they offer a student the option of receiving his/her financial aid disbursement via direct deposit within one day of the disbursement of monies, as specified. The bill also requests the UC to comply with these provisions.

AB 1162 (Frazier), would have required the CCC BOG and the CSU Trustees, and request UC Regents and the governing bodies of accredited private postsecondary educational institutions to adopt policies to be used to negotiate contracts with financial institutions. This bill was approved by this committee on April 9, 2013, by a vote of 9-1, but failed passage in Senate Banking and Finance Committee.

AB 262 (Coto), Chapter 679, Statutes of 2007, required the BOT of the CSU and the BOG of the CCC and urged the Regents of the UC and to (1) annually direct each of their campuses to disclose specified information regarding on-campus credit card marketing activities, and (2) prohibit banks and other commercial entities from offering gifts to students in exchange for completing credit card applications.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

California Bankers Association

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