

Date of Hearing: June 10, 2014

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Das Williams, Chair
SB 845 (Correa) – As Amended: May 7, 2014

SENATE VOTE: 31-0

SUBJECT: Postsecondary education: electronic disbursement of student financial aid.

SUMMARY: Requires the Board of Governors (BOG) of the California Community Colleges (CCC) and the Trustees of the California State University (CSU), and requests the Regents of the University of California (UC) and the governing body of an accredited private postsecondary educational institution, to develop one or more model contracts and all binding contracts, as specified, for use by their respective systems to disburse a financial aid award, scholarship aid, campus-based aid award, or school refunds onto debit cards, prepaid cards or other preloaded cards issued by a financial institution, as specified, and to post model and actual contracts on their respective Internet Web sites. Specifically, this bill:

- 1) Requires the CCC BOG and the CSU Trustees and requests the UC Regents and each governing body of an accredited private postsecondary educational institution to develop one or more model contracts for use at their respective systems to disburse a financial aid award, scholarship aid, campus-based aid award, or school refunds onto debit, prepaid, or preloaded cards issued by a financial institution; and, specifies that each model contract shall be developed in consultation with stakeholders including statewide student associations, individual campuses, and finance institutions that issue debit cards, prepaid cards, and preloaded cards and shall not be finalized before public comment is sought and considered.
- 2) Requires the BOG and the Trustees and requests the Regents and each governing body of an accredited private postsecondary educational institution to make every model contract, and every binding contract negotiated by an educational institution under the jurisdiction of one of these governing bodies with a financial institution for the disbursement of a financial aid award, scholarship, campus-based aid award, or school refund onto a debit card, prepaid card, or preloaded card, publicly available on its Internet Web site.
- 3) Specifies that every model contract developed shall consider the best interests of the students and shall, at a minimum, contain provisions that reflect conditions required for compliance with federal regulations governing the disbursement of federal financial aid.
- 4) Requires the BOG and the Trustees and requests the Regents and each governing body of an accredited private postsecondary educational institution to consider all of the following when developing each model contract:
 - a) The number of on-campus locations and proximity of off-campus locations where a fee-free withdrawal can be made by a student using a debit/prepaid/preloaded card;
 - b) The type and size of fees a student would incur from debit/prepaid/preload card usage and whether provisions of the model contract ensure that the educational institution is

provided information by the card-issuing financial institution to evaluate the costs of these fees to students;

- c) The impact, if any, that offering a card displaying the name or mascot of a campus or educational system would have on students, their campus, or their educational system;
- d) Whether provisions of the model contract ensure that the educational institution monitors compliance by the financial institution with federal Title IV requirements governing the disbursement of financial aid;
- e) Whether provisions of the model contract ensure a process to track and resolve student complaints about the card-issuing financial institution's credit delivery, customer service, and debit/prepaid/preloaded cards;
- f) The impact, if any, of the content of a dispute resolution clause on students, their campus, and their educational system, if a conflict were to arise between a student and the card-issuing financial institution;
- g) Whether provisions of the model contract ensure that the educational institution does not disclose student information to the card-issuing financial institution beyond what is necessary for that institution to perform the contracted financial aid award, scholarship, campus-based aid award, or school refund disbursement function; and,
- h) Whether provisions of the model contract ensure that the card-issuing financial institution does not solicit or collect information from a student that is not necessary to perform the contracted financial aid award, scholarship, campus-based aid award, or school refund disbursement function, as a condition of allowing the student to access financial aid award, scholarship, campus-based aid award, or school refund through a debit/prepaid/preloaded card

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 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: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, this bill has a negligible fiscal impact.

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 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, 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, "One of the challenges facing students and policymakers at the present time is the highly individualized approach taken by California campuses toward the contracts they enter into with financial institutions for the disbursement of financial aid, scholarship aid, campus-based aid, and school refunds onto debit/prepaid/preloaded cards. Several of these contracts have been criticized for failing to uphold the best interests of students, yet, to date, no public or private higher educational system in California has stepped in to provide guidance or assistance to the individual campuses that are negotiating these card contracts." The author contends that this bill would give the state's public and private higher

educational systems responsibility for developing model contracts for use by the campuses within their systems.

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 was released during the time that the USDE was 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 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.

The committee was formed and met four times this year (February, March, April, and May) to listen, discuss, review, and negotiate the proposed draft regulatory language provided by the USDE. During the last meeting, the rule making committee failed to reach consensus on the issue of campus debit cards; as such, the USDE is now able to propose whatever regulatory language it sees fit without going through another rule making committee process.

Related legislation. AB 1162 (Frazier), which failed passage in the Senate Banking and Financial Institutions Committee on July 3, 2013, would have required the BOG and the Trustees and request the Regents and the governing bodies of accredited private nonprofit and for-profit postsecondary educational institutions to adopt policies to be used for negotiating contracts between their institutions and banks and other financial institutions to disburse students' aid awards and other refunds onto debit/prepaid/preloaded cards.

AB 1927 (Frazier), which is scheduled to be heard in the Senate Education Committee on June 11, 2014, is similar in nature to AB 1162 (as described above).

SB 595 (Ron Calderon), Chapter 217, Statutes of 2013, which among many, prohibited any CCC campus or CSU campus 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; the UC was also asked to comply with the provisions of the bill.

REGISTERED SUPPORT / OPPOSITION:

Support

California Bankers Association
California Communities United Institute
California State Student Association
Community College League of California
Higher One
University of California Student Association

Opposition

None on file.

Analysis Prepared by: Jeanice Warden / HIGHER ED. / (916) 319-3960