

Written Testimony of Don Maurice
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Joint Committee on Financial Services
SB 146
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My name is Don Maurice and I am outside counsel to DBA International. Thank you for this opportunity to offer comments concerning SB 146.

DBA International is the nonprofit trade association that represents the interests of more than 500 companies throughout the United States that purchase or support the purchase of delinquent receivables. These companies are often referred to as debt buyers or debt buying companies.

DBA supports legislation designed to put an end to bad practices and protect consumers and businesses from financial harm.

DBA opposes SB 146 because it will harm consumers, small businesses and creditors.

SB 146's Adverse Impact on Small Businesses and Consumers

SB 146 harms small businesses. Professionals such as lawyers, accountants and doctors primarily provide their services to consumers on "credit," – the consumer often makes no or a small payment and receives and invoice. Contractors, cabinet makers and landscapers find themselves facing unpaid receivables especially when a project ends up costing more than a consumer budgeted.

SB 146 applies to all forms of consumer debt – including the unpaid receivables owed to these small businesses.¹ When consumer receivables are not paid, they become in default. Rather than resorting to a lawsuit, a small business owner trying to make the best of the situation might provide a repayment plan, particularly if the consumer is a neighbor or friend.

But the statute of limitation proposed by SB 146 is a trap for small business that extends such a helping hand. Under current law, as long as the consumer continues to make some payments towards the delinquent debt, the small business has an enforceable debt. Each payment restarts the limitation period and extends the time the creditor can sue if payments stop. Even if the limitations period does run under current law, the small business can still collect the debt. Current law gives small businesses some flexibility in establishing repayment arrangements.

¹ "This period shall apply whether the claim sounds in contract, contract under seal, account stated, open account or other cause, and notwithstanding the provisions of any other statute of limitations unless that statute provides for a shorter limitations period." SB 146, § 4(a).

SB 146 eliminates payment flexibility for consumer debt. Even if a consumer is making partial payments, SB 146 allows the limitations period to run. The clock does not restart. And when the SB 146 clock has run, it extinguishes the debt forever. The debt cannot be collected by non-judicial means, unlike current law.

Unlike current law, that limitations period is reduced by SB 146 to three years. The result is that if a creditor offers a payment plan longer than three years and the consumer defaults on that plan after the third year, the debt to be extinguished. And that is a best case scenario, where the payment plan is entered into just when the limitations period began to run. The situation grows worse for the creditor the later the payment plan begins following the start of the limitations period.

Small business owners will likely discover the onerous impact of SB 146 the hard way, when they are denied a judgment because the payment plan they entered into to assist their customer has allowed the debt to be extinguished. And depending on the size and number of consumer debts they have, the effect could be catastrophic, particularly on those small business owners who thought that by extending generous repayment terms they were “doing the right thing.” Not only are they barred from suing, they cannot even ask for payment.

SB 146 would compel small businesses to be less accommodating, less neighborly, with delinquent consumers. Payment terms would be short-term, if they would be offered at all, given the risk of extinguishment.

And larger businesses like hospitals and utilities that provide services before payment would be far less inclined to provide repayment terms. Medical and utility debts are also consumer debt under SB 146.

SB 146 means consumers who run into financial troubles will see less flexibility and accommodation, just when they need it the most.

SB 146 Harms Distressed Homeowners

Residential mortgage loans are also consumer debt under SB 146² and subject to the same shortened three year limitations period and debt extinguishment provisions.³

During the past several years several federal programs have been created to allow distressed homeowners to recast their home mortgage loans. At the core of these mortgage modification

² “‘Consumer debt’ means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.” SB 146, § 2.

³ SB 146, § 4(a).

programs is the existence of a defaulted consumer mortgage loan.⁴ A few years ago Massachusetts enacted General Law ch. 244, s. 35A, 35B, 35C allowing homeowners to obtain forbearance and modification plans from mortgage lenders to avoid foreclosure. The General Law offered relief to homeowners by allowing amortization of mortgage loans to be increased by as many as 15 years, so long as the mortgage term did not exceed 45 years.⁵

In enacting this law, this body recognized that encouraging creditors to provide long-term payment terms on defaulted consumer debt was critical in protecting consumers from harm. Mortgage lenders can recast troubled loans knowing that under present law, the six year (or twenty year, in the case of loans “under seal”⁶) limitations period is restarted following each payment on the modified loan.⁷

SB 146 does the exact opposite. Under SB 146, the limitations period for all consumer loans is shortened to three years.⁸ Any payment towards a defaulted consumer loan does not restart the limitations period, unless “a payment . . . completely cures the default and pays off any delinquency . . .”⁹ A consumer loan modification extending loan amortization does not cure a default with “a payment.” It would not restart the SB 146 limitations period. And, when the SB 146 limitations period expired in three years or less during the extended modified loan terms, the consumer mortgage loan would be extinguished.

No mortgage lender would risk debt the extinguishment provision of SB 146. It would end mortgage modifications of more than three years and is contrary to this Legislature’s understanding of the need for flexibility in repayment of defaulted consumer debt.

SB 146 Harms Consumers with Distressed Automobile and Student Loans

Just like with mortgage loans, modifications of student and automobile loans require flexible repayment plans. In the case of student loans, the federal Consumer Financial Protection Bureau (“CFPB”) notes that a lack of flexible, long term repayment modifications has hastened financial distress for many consumers.¹⁰ The CFPB has been critical of short-term forbearance options when addressing troubled student loans.¹¹

⁴ For example, to qualify for the federal Home Affordable Modification Program (“HAMP”) a consumer mortgage loan must be in default. U.S. Dep’t of the Treasury, Making Home Affordable Handbook, v. 3.4 ch. II § 1.1(2011), publicly available at https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_34.pdf.

⁵ General Law ch. 244, s. 35B(2)(b).

⁶ General Law ch. 260, s. 1.

⁷ *Boles v. Katz*, 340 Mass. 406 (1960).

⁸ SB 146, §§ 2, 4(a).

⁹ SB 146, § 4(c).

¹⁰ Annual Report of the CFPB Student Loan Ombudsman (October 16, 2014), p. 24 (“[T]he most common issue reported by borrowers is the inability to negotiate alternative repayment options with lenders and servicers when facing distress.” Publicly available at http://files.consumerfinance.gov/f/201410_cfpb_report_annual-report-of-the-student-loan-ombudsman.pdf an last accessed October 26, 2015.

¹¹ *Id.*, pp. 12-13 (“Complaints from private student loan borrowers suggest that a more commonly-utilized method to work with borrowers in distress is the use of short-term forbearance options, often for a non-renewable period of three months. In some cases, borrowers submitting complaints note that these forbearance options are often too short in duration to truly avoid default.”)

But short-term modifications are the only option for defaulted loans under SB 146 for the reasons discussed above. Unlike current law, partial payments do not restart the limitations period and the consumer debt is extinguished once the limitations period has run, regardless of post-default payments.

Financially distressed consumers may be trying to balance multiple defaulted loans – automobile, student, mortgage and credit card – all at the same time. Long-term repayment plans may be the only way to manage their financial distress. SB 146 closes this door for no good reason.

SB 146 Will Impair a Consumer’s Ability to Repair their Credit

Consumers sometimes seek to repayment plans of defaulted loans to repair their credit.¹² But contrary to federal and Massachusetts public policy, SB 146 compels short-term repayment of defaulted debt, making repayment plans less flexible or even impossible.

Unable to improve their credit, the effect of SB 146 for distressed consumers is higher interest rates on loans, if a loan can be secured at all.

SB 146 Is Uniquely Burdensome and Inflexible

SB 146 would be unique in the nation. Only two states have statutes of limitation the contain debt extinguishment provisions, Wisconsin and Mississippi. Neither state prohibits payments on defaulted debt from restarting the limitations period, offering creditors and consumers the ability to craft reasonable and flexible repayment terms.

DBA International’s Concerns

Our member debt buying companies purchase many of the types of debt described above. Motor vehicle, mortgage loan, credit card, medical and utility debt make up a significant amount of purchased debt. Our members are also small businesses here in the Commonwealth.

DBA International has a long history of advocating for increased consumer protections. Perhaps one of the most notable examples being reflected in DBA’s national certification program which certifies debt buying companies, collection law firms, and third party collection agencies. Our certification program is recognized as the gold standard in the receivables industry because DBA’s standards go above and beyond that which is required by state and federal law and is specifically tailored to ensure the protection of the consumer population.

In addition, DBA International works closely with legislators, regulators, and consumer groups to support legislation designed to enhance consumer protections – the only thing we ask is for laws and regulations to be reasonable and balanced so as to address legitimate interests and concerns of both the consumer and business communities. DBA was instrumental in negotiating and supporting the adoption of new

¹² Federal Student Aid, an Office of the U.S. Dep’t of Education, publicly available at <https://studentaid.ed.gov/sa/repay-loans/default/get-out>, last accessed October 26, 2015 (“Other benefits of loan rehabilitation include the removal of . . . the default status reported to the national credit bureaus . . .”).

statutory and regulatory requirements concerning debt collection in California in 2013, New York in 2014 and Maine earlier this year. On March 26, 2015 the Michigan State Senate adopted a resolution recognizing and commending DBA International for its efforts to protect consumers and creditors through its national Receivables Management Certification Program.¹³

DBA and its members offer a wealth of knowledge and experience concerning the life-cycle of consumer debt. While SB 146 was introduced with good intentions, DBA International opposes the bill for the reasons I have outlined.

My comments today highlight a few of the many fundamental flaws we have identified. We would like to work with the bill sponsor, the committee, and bill proponents to craft legislation which is sensible and recognizes the need for flexibility and compromise in the relationship between consumers and creditors.

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¹³ Michigan Senate Resolution 33 (2015) publicly available at <http://www.legislature.mi.gov/documents/2015-2016/resolutionadopted/Senate/pdf/2015-SAR-0033.pdf> last accessed October 26, 2015.