

SENATE, No. 1149

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JANUARY 25, 2018

Sponsored by:

Senator SANDRA B. CUNNINGHAM

District 31 (Hudson)

Senator CHRIS A. BROWN

District 2 (Atlantic)

Co-Sponsored by:

Senators Ruiz, Beach and Gordon

SYNOPSIS

Establishes Office of Student Loan Ombudsman; regulates student loan servicers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/27/2018)

1 AN ACT establishing the Office of the Student Loan Ombudsman
2 and regulating student loan servicers and supplementing Title 17
3 of the Revised Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. As used in this act:

9 "Commissioner" means the Commissioner of Banking and
10 Insurance.

11 "Ombudsman" means the Student Loan Ombudsman appointed
12 pursuant to section 2 of this act.

13 "Servicing" means: (1) receiving any scheduled periodic
14 payments from a student loan borrower pursuant to the terms of a
15 student education loan; (2) applying the payments of principal and
16 interest and other payments with respect to the amounts received
17 from a student loan borrower, as may be required pursuant to the
18 terms of a student education loan; and (3) performing other
19 administrative services with respect to a student education loan.

20 "Student education loan" means any loan primarily for personal
21 use to finance education or other school-related expenses.

22 "Student loan borrower" means any resident of this State who
23 has received or agreed to pay a student education loan; or any
24 person who shares responsibility with a resident for repaying a
25 student education loan.

26 "Student loan servicer" means any person, wherever located,
27 responsible for the servicing of any student education loan to any
28 student loan borrower.

29
30 2. There is created within the Department of Banking and
31 Insurance the Office of the Student Loan Ombudsman. The
32 ombudsman shall be appointed by the Governor with the advice and
33 consent of the Senate and shall serve at the pleasure of the
34 Governor during the Governor's term of office. The ombudsman
35 shall not hold any other office, position, or employment outside of
36 the position of ombudsman. Any vacancy occurring in the position
37 of ombudsman shall be filled in the same manner as the original
38 appointment. If the ombudsman shall be unable for any reason to
39 serve the full term of office, the Governor may designate an acting
40 ombudsman until a successor is appointed and qualified.

41
42 3. a. The ombudsman shall:

43 (1) receive, review, and attempt to resolve any complaints from
44 student education loan borrowers, including, but not limited to,
45 attempts to resolve those complaints in collaboration with institutions
46 of higher education, student loan servicers, and any other participants
47 in student education loan lending;

1 (2) compile and analyze data on student loan borrower complaints
2 as described in paragraph (1) of this subsection;

3 (3) assist student loan borrowers to understand their rights and
4 responsibilities under the terms of student education loans;

5 (4) provide information to the public, agencies, legislators, and
6 others regarding the problems and concerns of student loan borrowers,
7 and make recommendations for resolving those problems and
8 concerns;

9 (5) analyze and monitor the development and implementation of
10 federal, State, and local laws, regulations, and policies relating to
11 student loan borrowers and recommend any changes the Student Loan
12 Ombudsman deems necessary;

13 (6) review the complete student education loan history for any
14 student loan borrower who has provided written consent for review;

15 (7) disseminate information concerning the availability of the
16 Student Loan Ombudsman to assist student loan borrowers and
17 potential student loan borrowers, as well as public institutions of
18 higher education, student loan servicers, and any other participant in
19 student education loan lending, with any student loan servicing
20 concerns; and

21 (8) take any other actions necessary to fulfill the duties of the
22 Student Loan Ombudsman as set forth in this section.

23 b. No later than October 1, 2019, the Student Loan Ombudsman,
24 in consultation with the commissioner, shall establish and maintain a
25 student loan borrower education course that shall include educational
26 presentations and materials regarding student education loans. The
27 program shall include, but not be limited to, key loan terms,
28 documentation requirements, monthly payment obligations, income-
29 based repayment options, loan forgiveness, and disclosure
30 requirements.

31 c. No later than January 1, 2019, and annually thereafter, the
32 commissioner shall submit a report to the standing committees of the
33 General Assembly and Senate having cognizance of matters relating to
34 banking and higher education. The commissioner shall report on: (1)
35 the implementation of this section; (2) the overall effectiveness of the
36 Student Loan Ombudsman position; and (3) additional steps that need
37 to be taken for the Department of Banking and Insurance to gain
38 regulatory control over the licensing and enforcement of student loan
39 servicers.

40

41 4. a. (1) No person shall act as a student loan servicer, directly or
42 indirectly, without first obtaining a license from the commissioner
43 under subsection b. of this section, unless that person is exempt from
44 licensure pursuant to paragraph (2) of this subsection.

45 (2) The following persons are exempt from subsection a. of this
46 section: (a) any State or federally chartered bank, savings bank,
47 savings and loan association, or credit union; (b) any wholly owned
48 subsidiary of any bank or credit union; and (c) any operating

1 subsidiary where each owner of the operating subsidiary is wholly
2 owned by the same bank or credit union.

3 b. Any person seeking to act within this State as a student loan
4 servicer shall make a written application to the commissioner for an
5 initial license in the form prescribed by the commissioner. The
6 application shall be accompanied by:

7 (1) a financial statement prepared by a certified public accountant
8 or a public accountant, the accuracy of which is sworn to under oath
9 before a notary public by the applicant, proprietor, a general partner or
10 a corporate officer, or a member duly authorized to execute those
11 documents;

12 (2) (a) the history of criminal convictions of the: (i) applicant; (ii)
13 partners, if the applicant is a partnership; (iii) members, if the
14 applicant is a limited liability company or association; or (iv) officers,
15 directors and principal employees, if the applicant is a corporation; and

16 (b) sufficient information pertaining to the history of criminal
17 convictions of that applicant, partners, members, officers, directors or
18 principal employees as the commissioner deems necessary to make the
19 findings under subsection c. of this section;

20 (3) a nonrefundable license fee of \$1,000; and

21 (4) a nonrefundable investigation fee of \$800.

22 The commissioner may conduct a State and national criminal
23 history records check of the applicant and of each partner, member,
24 officer, director and principal employee of the applicant.

25 c. Upon the filing of an application for an initial license and the
26 payment of the fees for license and investigation, the commissioner
27 shall investigate the financial condition and responsibility, financial
28 and business experience, character and general fitness of the applicant.
29 The commissioner may issue a license if the commissioner finds that:

30 (1) the applicant's financial condition is sound;

31 (2) the applicant's business will be conducted honestly, fairly,
32 equitably, carefully and efficiently within the purposes and intent of
33 this act, and in a manner commanding the confidence and trust of the
34 community;

35 (3) (a) if the applicant is an individual, the individual is in all
36 respects properly qualified and of good character;

37 (b) if the applicant is a partnership, each partner is in all respects
38 properly qualified and of good character;

39 (c) if the applicant is a corporation or association, the president,
40 chairperson of the executive committee, senior officer responsible for
41 the corporation's business and chief financial officer or any other
42 person who performs similar functions as determined by the
43 commissioner, each director, each trustee and each shareholder owning
44 10 percent or more of each class of the securities of the corporation is
45 in all respects properly qualified and of good character; or

46 (d) if the applicant is a limited liability company, each member is
47 in all respects properly qualified and of good character;

1 (4) neither the applicant nor any person on behalf of the applicant
2 knowingly has made any incorrect statement of a material fact in the
3 application, or in any report or statement made pursuant to this act;

4 (5) neither the applicant nor any person on behalf of the applicant
5 knowingly has omitted to state any material fact necessary to give the
6 commissioner any information lawfully required by the commissioner;

7 (6) the applicant has paid the investigation fee and the license fee
8 required under subsection b. of this section; and

9 (7) the applicant has met any other similar requirements as
10 determined by the commissioner.

11 d. A license issued pursuant to subsection c. of this section shall
12 expire at the close of business on September 30 of the odd-numbered
13 year following its issuance, unless renewed or earlier surrendered,
14 suspended or revoked pursuant to this act. Not later than 15 days after
15 a licensee ceases to engage in the business of student loan servicing in
16 this State for any reason, including a business decision to terminate
17 operations in this State, license revocation, bankruptcy or voluntary
18 dissolution, the licensee shall provide written notice of surrender to the
19 commissioner and shall surrender to the commissioner its license for
20 each location in which the licensee has ceased to engage in business.
21 The written notice of surrender shall identify the location where the
22 records of the licensee will be stored and the name, address and
23 telephone number of an individual authorized to provide access to the
24 records. The surrender of a license does not reduce or eliminate the
25 licensee's civil or criminal liability arising from acts or omissions
26 occurring prior to the surrender of the license, including any
27 administrative actions undertaken by the commissioner to revoke or
28 suspend a license, assess a civil penalty, order restitution or exercise
29 any other authority provided to the commissioner.

30 e. A license may be renewed for the ensuing 24 month period
31 upon the filing of an application containing all required documents and
32 fees as provided in subsection b. of this section. The renewal
33 application shall be filed on or before September 1 of the year in
34 which the license expires. Any renewal application filed with the
35 commissioner after September 1 shall be accompanied by a \$100 late
36 fee. If an application for a renewal license has been filed with the
37 commissioner on or before the date the license expires, the license
38 sought to be renewed shall continue in full force and effect until the
39 issuance by the commissioner of the renewal license applied for or
40 until the commissioner has notified the licensee in writing of the
41 commissioner's refusal to issue the renewal license together with the
42 grounds upon which that refusal is based. The commissioner may
43 refuse to issue a renewal license on any ground on which the
44 commissioner might refuse to issue an initial license.

45 f. The applicant or licensee shall notify the commissioner, in
46 writing, of any change in the information provided in its initial
47 application for a license or its most recent renewal application for the
48 license, as applicable, not later than 10 business days after the

1 occurrence of the event that results in the information becoming
2 inaccurate.

3 g. The commissioner may deem an application for a license
4 abandoned if the applicant fails to respond to any request for
5 information required under this act. The commissioner shall notify the
6 applicant, in writing, that if the applicant fails to submit any
7 information not later than 60 days after the date on which the request
8 for information was made, the application shall be deemed abandoned.
9 An application filing fee paid prior to the date an application is
10 deemed abandoned pursuant to this subsection shall not be refunded.
11 Abandonment of an application pursuant to this subsection shall not
12 preclude the applicant from submitting a new application for a license
13 under the provisions of this act.

14

15 5. No person licensed to act within this State as a student loan
16 servicer shall do so under any other name or at any other place of
17 business than that named in the license. Any change of location of a
18 place of business of a licensee shall require prior written notice to
19 the commissioner. Not more than one place of business shall be
20 maintained under the same license but the commissioner may issue
21 more than one license to the same licensee upon compliance with
22 the provisions of this act as to each new licensee. A license shall
23 not be transferable or assignable.

24

25 6. a. Each student loan servicer licensee and persons exempt
26 from licensure pursuant to paragraph (2) of subsection a. of section
27 4 of this act shall maintain adequate records of each student
28 education loan transaction for not less than two years following the
29 final payment on that student education loan or the assignment of
30 that student education loan, whichever occurs first, or any longer
31 period as may be required by any other provision of law.

32 b. If requested by the commissioner, each student loan servicer
33 shall make records available or send records to the commissioner by
34 registered or certified mail, return receipt requested, or by any
35 express delivery carrier that provides a dated delivery receipt, not
36 later than five business days after requested by the commissioner to
37 do so. Upon request, the commissioner may grant a licensee
38 additional time to make records available or send the records to the
39 commissioner.

40

41 7. No student loan servicer shall:

42 a. directly or indirectly employ any scheme, device or artifice
43 to defraud or mislead student loan borrowers;

44 b. engage in any unfair or deceptive practice toward any person
45 or misrepresent or omit any material information in connection with
46 the servicing of a student education loan, including, but not limited
47 to, misrepresenting the amount, nature or terms of any fee or
48 payment due or claimed to be due on a student education loan, the

- 1 terms and conditions of the loan agreement or the borrower's
2 obligations under the loan;
- 3 c. obtain property by fraud or misrepresentation;
- 4 d. knowingly misapply or recklessly apply student education
5 loan payments to the outstanding balance of a student education
6 loan;
- 7 e. knowingly or recklessly provide inaccurate information to a
8 credit bureau, thereby harming a student loan borrower's
9 creditworthiness;
- 10 f. fail to report both the favorable and unfavorable payment
11 history of the student loan borrower to a nationally recognized
12 consumer credit bureau at least annually if the student loan servicer
13 regularly reports information to a credit bureau;
- 14 g. refuse to communicate with an authorized representative of
15 the student loan borrower who provides a written authorization
16 signed by the student loan borrower, provided the student loan
17 servicer may adopt procedures reasonably related to verifying that
18 the representative is in fact authorized to act on behalf of the
19 student loan borrower; or
- 20 h. negligently make any false statement or knowingly and
21 willfully make any omission of a material fact in connection with
22 any information or reports filed with a governmental agency or in
23 connection with any investigation conducted by the commissioner
24 or another governmental agency.
- 25
- 26 8. a. In addition to any authority provided under Title 17 of the
27 Revised Statutes, the commissioner shall have the authority to
28 conduct investigations and examinations as follows:
- 29 (1) For purposes of initial licensing, license renewal, license
30 suspension, license revocation or termination, or general or specific
31 inquiry or investigation to determine compliance with this act, the
32 commissioner may access, receive and use any books, accounts,
33 records, files, documents, information or evidence including, but
34 not limited to: (a) criminal, civil and administrative history
35 information; (b) personal history and experience information,
36 including independent credit reports obtained from a consumer
37 reporting agency described in Section 603(p) of the "Fair Credit
38 Reporting Act" (15 U.S.C. s.1681a); and (c) any other documents,
39 information or evidence the commissioner deems relevant to the
40 inquiry or investigation regardless of the location, possession,
41 control or custody of documents, information or evidence.
- 42 (2) For the purposes of investigating violations or complaints
43 arising under this act or for the purposes of examination, the
44 commissioner may review, investigate or examine any student loan
45 servicer licensee or person subject to this act. The commissioner
46 may direct, subpoena or order the attendance of and examine under
47 oath all persons whose testimony may be required about the student
48 education loan or the business or subject matter of any examination

1 or investigation, and may direct, subpoena or order any person
2 subject to this act to produce books, accounts, records, files and any
3 other documents the commissioner deems relevant to the inquiry.

4 b. In making any examination or investigation authorized by
5 this section, the commissioner may control access to any documents
6 and records of the student loan servicer licensee or person under
7 examination or investigation. The commissioner may take
8 possession of the documents and records or place a person in
9 exclusive charge of the documents and records in the place where
10 they are usually kept. During the period of control, no person shall
11 remove or attempt to remove any of the documents and records
12 except pursuant to a court order or with the consent of the
13 commissioner. Unless the commissioner has reasonable grounds to
14 believe the documents or records of the student loan servicer
15 licensee or person have been, or are at risk of being, altered or
16 destroyed for purposes of concealing a violation of this act, the
17 student loan servicer licensee or owner of the documents and
18 records shall have access to the documents or records as necessary
19 to conduct its ordinary business affairs.

20 c. In order to carry out the purposes of this section, the
21 commissioner may:

22 (1) retain attorneys, accountants or other professionals and
23 specialists as examiners, auditors or investigators to conduct or
24 assist in the conduct of examinations or investigations;

25 (2) enter into agreements or relationships with other government
26 officials or regulatory associations in order to improve efficiencies
27 and reduce regulatory burden by sharing resources, standardized or
28 uniform methods or procedures, and documents, records,
29 information or evidence obtained under this section;

30 (3) use, hire, contract or employ public or privately available
31 analytical systems, methods or software to examine or investigate
32 the student loan servicer licensee or any person subject to this act;

33 (4) accept and rely on examination or investigation reports made
34 by other government officials, within or without this State; and

35 (5) accept audit reports made by an independent certified public
36 accountant for the student loan servicer licensee or person subject to
37 this act in the course of that part of the examination covering the
38 same general subject matter as the audit and may incorporate the
39 audit report in the report of examination, report of investigation or
40 other writing of the commissioner.

41 d. The authority of this section shall remain in effect, whether
42 the student loan servicer licensee or person subject to this act, acts
43 or claims to act under any licensing or registration law of this State,
44 or claims to act without that authority.

45 e. No student loan servicer licensee or person subject to
46 investigation or examination under this section may knowingly
47 withhold, abstract, remove, mutilate, destroy or secrete any books,
48 records, computer records or other information.

1 9. a. The commissioner may suspend, revoke or refuse to
2 renew any license issued under the provisions of subsection c. of
3 section 4 of this act, or take any other action, if the commissioner
4 finds that: (1) the licensee has violated any provision of this act or
5 any regulation made pursuant to this act; or (2) any fact or condition
6 exists which, if it had existed at the time of the original application
7 for the license, clearly would have warranted a denial of the license.
8 No abatement of the license fee shall be made if the license is
9 surrendered, revoked, or suspended prior to the expiration of the
10 period for which it was issued.

11 b. (1) Whenever it appears to the commissioner that any
12 person has violated, is violating or is about to violate any of the
13 provisions of this act, or any regulation adopted pursuant to this act,
14 or any licensee or any owner, director, officer, member, partner,
15 shareholder, trustee, employee or agent of a licensee has committed
16 any fraud, engaged in dishonest activities or made any
17 misrepresentation, the commissioner may bring a civil suit in a
18 court of competent jurisdiction to enjoin the violation or potential
19 violation, seek civil penalties pursuant to paragraph (2) of this
20 subsection, or both.

21 (2) Any person who violates any provision of this act shall be
22 liable, in a civil action brought by the commissioner in a court of
23 competent jurisdiction, for a penalty of not more than \$5,000 for the
24 first violation, \$10,000 for the second violation and \$15,000 for
25 each subsequent violation. The penalty shall be paid to the
26 commissioner to be used in accordance with this act and shall be
27 collected pursuant to the "Penalty Enforcement Law of 1999,"
28 P.L.1999, c.274 (C.2A:58-10 et seq.). The court shall also award
29 court costs and reasonable attorneys' fees to the commissioner.
30

31 10. A student loan servicer shall comply with all applicable
32 federal laws and regulations relating to student loan servicing,
33 including, but not limited to, the "Truth in Lending Act" (15 U.S.C.
34 s.1601 et seq.). In addition to any other remedies provided by law,
35 a violation of any federal law or regulation shall be deemed a
36 violation of this section and a basis upon which the commissioner
37 may take enforcement action pursuant to section 9 of this act.
38

39 11. All costs of the implementation of this act shall be regarded
40 as administrative costs of the Department of Banking and Insurance.
41 Moneys collected from license fees, inspections, or violations
42 pursuant to this act shall be expended by the commissioner for the
43 purpose of administering the provisions of this act.
44

45 12. The Commissioner of Banking and Insurance shall, in
46 accordance with the "Administrative Procedure Act," P.L.1968,
47 c.410 (C.52:14B-1 et seq.), adopt the rules and regulations
48 necessary to implement the provisions of this act.

1 Upon the filing of an application for an initial license and the
2 payment of the fees for license and investigation, the commissioner
3 will investigate the financial condition and responsibility, financial
4 and business experience, character and general fitness of the
5 applicant. The bill provides that licenses expire at the close of
6 business on September 30 of the odd-numbered year following their
7 issuance, unless renewed or earlier surrendered, suspended or
8 revoked. The bill establishes procedures for license renewal and
9 surrender.

10 The bill requires student loan servicers, and certain other entities
11 exempt from the other requirements of the bill, to maintain student
12 loan records for at least two years following final payment or
13 assignment of the loan. The records are to be provided to the
14 commissioner for inspection upon request.

15 The bill grants the commissioner the authority to conduct certain
16 investigations and examinations for purposes of initial licensing,
17 license renewal, license suspension, license revocation or
18 termination, or general or specific inquiry or investigation to
19 determine compliance, in which the commissioner may access,
20 receive and use any books, accounts, records, files, documents,
21 information or evidence.

22 The bill also provides that any person who violates any provision
23 of this act will be liable, in a civil action brought by the
24 commissioner in a court of competent jurisdiction, for a penalty of
25 not more than \$5,000 for the first violation, \$10,000 for the second
26 violation and \$15,000 for each subsequent violation.