

[First Reprint]
SENATE, No. 1149

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED JANUARY 25, 2018

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SYNOPSIS

Provides for appointment of Student Loan Ombudsman and regulates student loan servicers.

CURRENT VERSION OF TEXT

As reported by the Assembly Higher Education Committee on June 6, 2019, with amendments.

(Sponsorship Updated As Of: 6/28/2019)

1 AN ACT ¹**[**establishing the Office of the **]** concerning the
2 appointment of a¹ Student Loan Ombudsman ¹**[and]** ¹,¹ regulating
3 student loan servicers ¹, amending P.L.2005, c.1991,¹ and
4 supplementing Title 17 of the Revised Statutes.

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

8
9 1. ¹(New section)¹ As used in this act:
10 "Commissioner" means the Commissioner of Banking and
11 Insurance.

12 ¹"National Mortgage Licensing System and Registry" means the
13 licensing system owned and operated by the State Regulatory
14 Registry LLC, a wholly owned subsidiary of the Conference of
15 State Bank Supervisors, which functions as a system of record for
16 non-depository, financial services licensing or registration in
17 participating state agencies, including the District of Columbia and
18 United States Territories of Puerto Rico, the United States Virgin
19 Islands, and Guam, where it is the official system for companies
20 and individuals seeking to apply for, amend, renew and surrender
21 license authorities.¹

22 "Ombudsman" means the Student Loan Ombudsman appointed
23 pursuant to section 2 of this act.

24 "Servicing" means: ¹**[(1)]**

25 a.¹ receiving any scheduled periodic payments from a student
26 loan borrower ¹**[**pursuant to the terms of a student education loan;
27 (2) applying the payments of principal and interest and other
28 payments with respect to the amounts received from a student loan
29 borrower, as may be required pursuant to the terms of a student
30 education loan; and (3) performing other administrative services
31 with respect to a student education loan.**]** or notification of such
32 payments, and applying payments to the borrower's account
33 pursuant to the terms of the student education loan or the contract
34 governing the servicing of the loan;

35 b. during a period when no payment is required on the student
36 education loan, maintaining account records for the loan and
37 communicating with the student loan borrower regarding the loan,
38 on behalf of the holder of the loan; or

39 c. interacting with a student loan borrower to facilitate the loan
40 servicing as described in this definition, including activities to help
41 prevent loan default on obligations arising from a student education
42 loan.¹

43 "Student education loan" means ¹**[**any loan primarily for
44 personal use to finance education**]** a loan that is extended to a
45 student loan borrower expressly to finance postsecondary education

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHI committee amendments adopted June 6, 2019.

1 expenses¹ or other school-related expenses ¹and shall not include
 2 open-end credit or any loan secured by real property¹.

3 "Student loan borrower" means any resident of this State who
 4 has received or agreed to pay a student education loan; or any
 5 person who shares responsibility with a resident for repaying a
 6 student education loan.

7 "Student loan servicer" means any person, wherever located,
 8 responsible for the servicing of any student education loan to any
 9 student loan borrower.

10

11 2. ¹(New section)¹ ¹【There is created within the Department
 12 of Banking and Insurance the Office of the Student Loan
 13 Ombudsman. The ombudsman shall be appointed by the Governor
 14 with the advice and consent of the Senate and shall serve at the
 15 pleasure of the Governor during the Governor's term of office. The
 16 ombudsman shall not hold any other office, position, or
 17 employment outside of the position of ombudsman. Any vacancy
 18 occurring in the position of ombudsman shall be filled in the same
 19 manner as the original appointment. If the ombudsman shall be
 20 unable for any reason to serve the full term of office, the Governor
 21 may designate an acting ombudsman until a successor is appointed
 22 and qualified.】

23 a. The commissioner shall designate a Student Loan
 24 Ombudsman within the Department of Banking and Insurance to
 25 carry out the duties and activities set forth in section 3 of this act.
 26 Contingent on the availability of funding, the department may hire
 27 additional staff as necessary to implement this act.

28 b. The ombudsman shall receive and review complaints from
 29 student loan borrowers. Any complaint received by the ombudsman
 30 in regard to a student loan servicer shall be referred to the
 31 commissioner. The ombudsman and the commissioner shall confer
 32 annually regarding student loan servicer complaints, the proper
 33 referral process for the complaints, and the ombudsman reporting
 34 requirement established pursuant to section 3 of this act.¹

35

36 3. ¹(New section)¹ a. The ¹commissioner shall ensure that
 37 the¹ ombudsman ¹【shall】¹ :

38 (1) receive, review, and attempt to resolve any complaints from
 39 student ¹【education】¹ loan borrowers, including, but not limited to,
 40 attempts to resolve those complaints in collaboration with
 41 institutions of higher education, student loan servicers, and any
 42 other participants in student education loan lending;

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

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

47 (4) provide information to the public, agencies, legislators, and
 48 others regarding the problems and concerns of student loan

1 borrowers, and make recommendations for resolving those
2 problems and concerns;

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

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

9 (7) disseminate information concerning the availability of the
10 Student Loan Ombudsman to assist student loan borrowers and
11 potential student loan borrowers, ¹~~as well as public~~ including
12 disseminating the information to¹ institutions of higher education,
13 student loan servicers, and any other participant in student
14 education loan lending, with any student loan servicing concerns;
15 and

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

18 b. No later than October 1, ¹~~2019~~ 2020¹, the ¹commissioner
19 shall ensure that the¹ Student Loan Ombudsman ¹~~],~~ in consultation
20 with the commissioner, shall and the Higher Education Student
21 Assistance Authority¹ establish and maintain a student loan
22 borrower education course that shall include educational
23 presentations and materials regarding student education loans. The
24 program shall include, but not be limited to, key loan terms,
25 documentation requirements, monthly payment obligations, income-
26 based repayment options, loan forgiveness, and disclosure
27 requirements.

28 c. No later than ¹~~January 1, 2019~~ 12 months following the
29 date of appointment of the ombudsman pursuant to section 2 of this
30 act¹, and annually thereafter, the ¹~~commissioner~~ Student Loan
31 Ombudsman¹ shall submit a report to the ¹~~standing committees of~~
32 the General Assembly and Senate having cognizance of matters
33 relating to banking and higher education Commissioner of
34 Banking and Insurance and the Secretary of Higher Education¹ .
35 The ¹~~commissioner~~ ombudsman¹ shall report on: (1) the
36 implementation of this section; (2) the overall effectiveness of the
37 Student Loan Ombudsman position; and (3) additional steps that
38 need to be taken for the Department of Banking and Insurance to
39 gain regulatory control over the licensing and enforcement of
40 student loan servicers.

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

1 (2) The following persons are exempt from subsection a. of this
2 section: (a) any State or federally chartered bank, savings bank,
3 savings and loan association, or credit union; (b) any wholly owned
4 subsidiary of any bank or credit union; and (c) any operating
5 subsidiary where each owner of the operating subsidiary is wholly
6 owned by the same bank or credit union.

7 b. Any person seeking to act within this State as a student loan
8 servicer shall make a written application to the commissioner for an
9 initial license in the form prescribed by the commissioner ¹utilizing
10 the Nationwide Mortgage Licensing System and Registry¹ . The
11 application shall be accompanied by:

12 (1) a financial statement prepared by a certified public
13 accountant or a public accountant, the accuracy of which is sworn
14 to under oath before a notary public by the applicant, proprietor, a
15 general partner or a corporate officer, or a member duly authorized
16 to execute those documents;

17 (2) (a) the history of criminal convictions of the: (i) applicant;
18 (ii) partners, if the applicant is a partnership; (iii) members, if the
19 applicant is a limited liability company or association; or (iv)
20 officers, directors and principal employees, if the applicant is a
21 corporation; and

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

26 (3) a nonrefundable license fee of ¹~~[\$1,000; and]~~ \$5,000;¹

27 (4) a nonrefundable investigation fee ¹~~[of \$800]~~ in such
28 amount as determined by the commissioner; and

29 (5) a fee paid to the Nationwide Mortgage Licensing System and
30 Registry as established by that entity¹ .

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

34 c. Upon the filing of an application for an initial license and
35 the payment of the fees for license and investigation, the
36 commissioner shall investigate the financial condition and
37 responsibility, financial and business experience, character and
38 general fitness of the applicant. The commissioner may issue a
39 license if the commissioner finds that:

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

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

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

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

- 1 (c) if the applicant is a corporation or association, the president,
2 chairperson of the executive committee, senior officer responsible
3 for the corporation's business and chief financial officer or any
4 other person who performs similar functions as determined by the
5 commissioner, each director, each trustee and each shareholder
6 owning 10 percent or more of each class of the securities of the
7 corporation is in all respects properly qualified and of good
8 character; or
- 9 (d) if the applicant is a limited liability company, each member
10 is in all respects properly qualified and of good character;
- 11 (4) neither the applicant nor any person on behalf of the
12 applicant knowingly has made any incorrect statement of a material
13 fact in the application, or in any report or statement made pursuant
14 to this act;
- 15 (5) neither the applicant nor any person on behalf of the
16 applicant knowingly has omitted to state any material fact necessary
17 to give the commissioner any information lawfully required by the
18 commissioner;
- 19 (6) the applicant has paid the investigation fee and the license
20 fee required under subsection b. of this section; and
- 21 (7) the applicant has met any other similar requirements as
22 determined by the commissioner.
- 23 d. A license issued pursuant to subsection c. of this section
24 shall expire at the close of business on ¹~~September 30~~ December
25 31¹ of the ¹~~odd-numbered~~ year ¹~~following~~ of¹ its issuance,
26 unless renewed or earlier surrendered, suspended or revoked
27 pursuant to this act. Not later than 15 days after a licensee ceases to
28 engage in the business of student loan servicing in this State for any
29 reason, including a business decision to terminate operations in this
30 State, license revocation, bankruptcy or voluntary dissolution, the
31 licensee shall provide written notice of surrender to the
32 commissioner and shall surrender to the commissioner its license
33 for each location in which the licensee has ceased to engage in
34 business. The written notice of surrender shall identify the location
35 where the records of the licensee will be stored and the name,
36 address and telephone number of an individual authorized to
37 provide access to the records. The surrender of a license does not
38 reduce or eliminate the licensee's civil or criminal liability arising
39 from acts or omissions occurring prior to the surrender of the
40 license, including any administrative actions undertaken by the
41 commissioner to revoke or suspend a license, assess a civil penalty,
42 order restitution or exercise any other authority provided to the
43 commissioner.
- 44 e. A license may be renewed for the ensuing ¹~~24~~ 12¹ month
45 period upon the filing of an application containing all required
46 documents and fees as provided in subsection b. of this section.
47 The renewal application shall be filed on or before ¹~~September~~
48 December¹ 1 of the year in which the license expires. Any renewal

1 application filed with the commissioner after ¹~~【September】~~
2 December¹ shall be accompanied by a ¹~~【\$100】~~¹ late fee ¹of \$100
3 per day. A license will not be renewed until the license fee and any
4 applicable late fees have been received¹ . If an application for a
5 renewal license has been filed with the commissioner on or before
6 the date the license expires, the license sought to be renewed shall
7 continue in full force and effect until the issuance by the
8 commissioner of the renewal license applied for or until the
9 commissioner has notified the licensee in writing of the
10 commissioner's refusal to issue the renewal license together with
11 the grounds upon which that refusal is based. The commissioner
12 may refuse to issue a renewal license on any ground on which the
13 commissioner might refuse to issue an initial license.

14 f. The applicant or licensee shall notify the commissioner, in
15 writing, of any change in the information provided in its initial
16 application for a license or its most recent renewal application for
17 the license, as applicable, not later than 10 business days after the
18 occurrence of the event that results in the information becoming
19 inaccurate.

20 g. The commissioner may deem an application for a license
21 abandoned if the applicant fails to respond to any request for
22 information required under this act. The commissioner shall notify
23 the applicant, in writing, that if the applicant fails to submit any
24 information not later than 60 days after the date on which the
25 request for information was made, the application shall be deemed
26 abandoned. An application filing fee paid prior to the date an
27 application is deemed abandoned pursuant to this subsection shall
28 not be refunded. Abandonment of an application pursuant to this
29 subsection shall not preclude the applicant from submitting a new
30 application for a license under the provisions of this act.

31

32 ¹5. (New section) The commissioner shall automatically issue a
33 limited, irrevocable license to any person servicing a student loan
34 under contract with the United States Department of Education as
35 follows:

36 a. Any person seeking to act within this State as a student loan
37 servicer is exempt from the application procedures established
38 pursuant to subsection b. of section 4 of this act, other than the
39 requirements of paragraph (3) and paragraph (4), to the extent that
40 the student loan servicing performed in this State is conducted
41 pursuant to a contract awarded by the United States Secretary of
42 Education under 20 U.S.C. s.1087f. The procedure to document
43 eligibility for the exemption shall be prescribed by the
44 commissioner.

45 b. Any person deemed exempt by the commissioner pursuant to
46 subsection a. of this section shall be issued a license by the
47 commissioner for the servicing of student loans under contract with
48 the United States Department of Education and shall be considered

1 by the commissioner to have met all requirements established in
2 subsection c. of section 4 of this act.

3 c. The provisions of subsections d. through g. of section 4 of
4 this act and subsection a. of section 10 of this act shall not be
5 applicable to a person issued a limited license pursuant to this
6 section to the extent that the person is servicing federal student
7 loans. A person shall not be exempt from subsections d. through g.
8 of section 4 of this act or subsection a. of section 10 to the extent
9 that the person is also servicing non-federal loans.

10 d. Any person issued a license pursuant to this section shall
11 provide the commissioner with written notice within seven days
12 following the notification of the expiration, revocation, or
13 termination of any contract awarded by the United States Secretary
14 of Education under 20 U.S.C s.1087f. The person shall have 30
15 days to satisfy all requirements established under this act in order to
16 continue to act within this State as a student loan servicer unless the
17 person is also licensed to service non-federal loans in New Jersey.
18 At the expiration of the 30-day period, if the person has not
19 satisfied the requirements established pursuant to this act, the
20 commissioner shall immediately suspend any license granted under
21 this section.

22 e. In the case of student loan servicing that is not conducted
23 pursuant to a contract awarded by the United States Secretary of
24 Education under 20 U.S.C. s.1087f, nothing in this section shall
25 prevent the commissioner from issuing an order to temporarily or
26 permanently prohibit any person from acting as a student loan
27 servicer.

28 f. In the case of student loan servicing conducted pursuant to a
29 contract awarded by the United States Secretary of Education under
30 20 U.S.C s.1087f, nothing in the section shall prevent the
31 commissioner from issuing a cease and desist or injunction against
32 any student loan servicer to cease activities in violation of this act
33 or the New Jersey consumer fraud act, P.L.1960, c.39 (C.56:8-1 et
34 seq.).¹

35
36 ¹**[5.]** 6. (New section) a.¹ No person licensed to act within this
37 State as a student loan servicer shall do so under any other name or
38 at any other place of business than that named in the license. Any
39 change of location of a place of business of a licensee shall require
40 prior written notice to the commissioner. Not more than one place
41 of business shall be maintained under the same license but the
42 commissioner may issue more than one license to the same licensee
43 upon compliance with the provisions of this act as to each new
44 licensee. A license shall not be transferable or assignable.

45 ¹b. A student loan servicer shall keep on file with the
46 commissioner a surety bond obtained from a surety company
47 authorized to transact business in this State in an amount of not less
48 than \$30,000. The commissioner shall, by regulation, provide who

1 shall be eligible to receive the protection afforded by the bond and
2 may increase the required bond amount, if he determines it to be
3 necessary. When an action is commenced on the bond, the
4 commissioner may require the filing of a new bond and
5 immediately on recovery of any action on the bond, the student loan
6 servicer shall file a new bond.¹

7
8 ¹~~6.~~ 7. (New section)¹ a. ¹~~Each~~ Except as otherwise
9 required pursuant to federal law, a federal student education loan
10 agreement, or a contract between the federal government and a
11 licensee, each¹ student loan servicer licensee and persons exempt
12 from licensure pursuant to paragraph (2) of subsection a. of section
13 4 of this act shall maintain adequate records of each student
14 education loan transaction for not less than two years following the
15 final payment on that student education loan or the assignment of
16 that student education loan, whichever occurs first ¹~~],~~ or any longer
17 period as may be required by any other provision of law ¹~~]~~.

18 b. If requested by the commissioner, each student loan servicer
19 shall make records available or send records to the commissioner by
20 registered or certified mail, return receipt requested, or by any
21 express delivery carrier that provides a dated delivery receipt, not
22 later than five business days after requested by the commissioner to
23 do so. Upon request, the commissioner may grant a licensee
24 additional time to make records available or send the records to the
25 commissioner.

26
27 ¹8. (New section) Except as otherwise provided pursuant to
28 federal law, federal student education loan agreements, or a contract
29 between the federal government and a student loan servicer, a
30 student loan servicer shall:

31 a. Upon receipt of a written inquiry from a student loan
32 borrower or the representative of a student loan borrower, a student
33 loan servicer shall respond by:

34 (1) acknowledging receipt of the inquiry within 10 business
35 days; and

36 (2) providing information relating to the inquiry, and, if
37 applicable, the action the student loan servicer will take to correct
38 the account, or an explanation of the student loan servicer's position
39 that the borrower's account is correct, within 30 business days.

40 b. A student loan servicer shall inquire of a student loan
41 borrower how to apply an overpayment to a student education loan.
42 A borrower's instruction on how to apply an overpayment to a
43 student education loan shall stay in effect for any future
44 overpayments during the term of the student education loan until
45 the borrower provides different instructions. For purposes of this
46 subsection, "overpayment" means a payment on a student education
47 loan in excess of the monthly amount due from the student loan

1 borrower on a student education loan, commonly referred to as a
2 prepayment.

3 c. A student loan servicer shall apply partial payments in a
4 manner that minimizes late fees and negative credit reporting. If
5 there are multiple loans on a borrower's account with an equal stage
6 of delinquency, a student loan servicer shall satisfy the
7 requirements of this subsection by applying partial payments to
8 satisfy as many individual loan payments as possible on a
9 borrower's account. For purposes of this subsection, "partial
10 payment" means a payment on a student education loan account that
11 contains multiple individual loans in an amount less than the
12 amount necessary to satisfy the outstanding payment due on all
13 loans in the student education loan account, commonly referred to
14 as an underpayment.

15 d. The following requirements shall be applicable to a student
16 loan servicer in the event of the sale, assignment, or other transfer
17 of the servicing of a student education loan that results in a change
18 in the identity of the person to whom a student loan borrower is
19 required to send payments or direct any communication concerning
20 the student education loan:

21 (1) as a condition of a sale, an assignment, or any other transfer
22 of the servicing of a student education loan, a student loan servicer
23 shall require the new student loan servicer to honor all benefits
24 originally represented as available to a student loan borrower during
25 the repayment of the student education loan and preserve the
26 availability of those benefits, including any benefits for which the
27 student loan borrower has not yet qualified;

28 (2) a student loan servicer shall transfer to the new student loan
29 servicer for the student education loan all information regarding the
30 student loan borrower, the account of the borrower, and the student
31 education loan of the borrower. The information shall include the
32 repayment status of the student loan borrower and any benefits
33 associated with the student education loan of the borrower;

34 (3) the student loan servicer shall complete the transfer of
35 information required pursuant to paragraph (2) of this subsection
36 within 45 calendar days after the sale, assignment, or other transfer
37 of the servicing of the student education loan; and

38 (4) the sale, assignment, or other transfer of the servicing of a
39 student education loan shall be completed at least seven calendar
40 days before the next payment on the student education loan is due.

41 e. A student loan servicer who obtains the right to service a
42 student education loan shall adopt policies and procedures to verify
43 that the student loan servicer has received all information regarding
44 the student loan borrower, the account of the student loan borrower,
45 and the student education loan of the student loan borrower
46 including, but not limited to, the repayment status of the student
47 loan borrower and any benefits associated with the student
48 education loan of the student loan borrower.

1 f. A student loan servicer shall evaluate a student loan
2 borrower for eligibility for an income-driven repayment program
3 prior to placing the borrower in forbearance or default, if an
4 income-driven repayment program is available to the borrower.¹

5
6 ¹**[7.] 9. (New section)**¹ No student loan servicer shall:

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

9 b. engage in any unfair or deceptive practice toward any person
10 or misrepresent or omit any material information in connection with
11 the servicing of a student education loan, including, but not limited
12 to, misrepresenting the amount, nature or terms of any fee or
13 payment due or claimed to be due on a student education loan, the
14 terms and conditions of the loan agreement or the borrower's
15 obligations under the loan;

16 c. obtain property by fraud or misrepresentation;

17 d. ¹**[knowingly]**¹ misapply ¹**[or recklessly apply]**¹ student
18 education loan payments to the outstanding balance of a student
19 education loan;

20 e. ¹**[knowingly or recklessly]**¹ provide inaccurate information
21 to a credit bureau, thereby harming a student loan borrower's
22 creditworthiness;

23 f. fail to report both the favorable and unfavorable payment
24 history of the student loan borrower to a nationally recognized
25 consumer credit bureau at least annually if the student loan servicer
26 regularly reports information to a credit bureau;

27 g. refuse to communicate with an authorized representative of
28 the student loan borrower who provides a written authorization
29 signed by the student loan borrower, provided the student loan
30 servicer may adopt procedures reasonably related to verifying that
31 the representative is in fact authorized to act on behalf of the
32 student loan borrower; ¹**[or]**¹

33 h. ¹**[negligently]**¹ make any false statement or knowingly and
34 willfully make any omission of a material fact in connection with
35 any information or reports filed with a governmental agency or in
36 connection with any investigation conducted by the commissioner
37 or another governmental agency ¹;

38 i. fail to respond within 15 business days to communications
39 from the Department of Banking and Insurance, or within such
40 shorter, reasonable period of time as may be requested by the
41 department; or

42 j. fail to respond within 15 business days to a consumer
43 complaint submitted to the student loan servicer by the department.
44 If necessary, the student loan servicer may request additional time
45 to respond to the complaint, up to a maximum of 45 business days,
46 provided that the request is accompanied by an explanation on why
47 additional time is reasonable and necessary¹ .

1 ¹**[8.] 10. (New section)¹** a. In addition to any authority
2 provided under Title 17 of the Revised Statutes, the commissioner
3 shall have the authority to conduct investigations and examinations
4 as follows:

5 (1) For purposes of initial licensing, license renewal, license
6 suspension, license revocation or termination, or general or specific
7 inquiry or investigation to determine compliance with this act, the
8 commissioner may access, receive and use any books, accounts,
9 records, files, documents, information or evidence including, but
10 not limited to: (a) criminal, civil and administrative history
11 information; (b) personal history and experience information,
12 including independent credit reports obtained from a consumer
13 reporting agency described in Section 603(p) of the “Fair Credit
14 Reporting Act” (15 U.S.C. s.1681a); and (c) any other documents,
15 information or evidence the commissioner deems relevant to the
16 inquiry or investigation regardless of the location, possession,
17 control or custody of documents, information or evidence.

18 (2) For the purposes of investigating violations or complaints
19 arising under this act or for the purposes of examination, the
20 commissioner may review, investigate or examine any student loan
21 servicer licensee or person subject to this act. The commissioner
22 may direct, subpoena or order the attendance of and examine under
23 oath all persons whose testimony may be required about the student
24 education loan or the business or subject matter of any examination
25 or investigation, and may direct, subpoena or order any person
26 subject to this act to produce books, accounts, records, files and any
27 other documents the commissioner deems relevant to the inquiry.

28 b. In making any examination or investigation authorized by
29 this section, the commissioner may control access to any documents
30 and records of the student loan servicer licensee or person under
31 examination or investigation. The commissioner may take
32 possession of the documents and records or place a person in
33 exclusive charge of the documents and records in the place where
34 they are usually kept. During the period of control, no person shall
35 remove or attempt to remove any of the documents and records
36 except pursuant to a court order or with the consent of the
37 commissioner. Unless the commissioner has reasonable grounds to
38 believe the documents or records of the student loan servicer
39 licensee or person have been, or are at risk of being, altered or
40 destroyed for purposes of concealing a violation of this act, the
41 student loan servicer licensee or owner of the documents and
42 records shall have access to the documents or records as necessary
43 to conduct its ordinary business affairs.

44 c. ¹**[In order to carry out the purposes of this section]** When
45 making an examination or investigation under this act¹, the
46 commissioner may:

47 (1) retain attorneys, ¹appraisers, independent actuaries,
48 independent certified public¹ accountants or other professionals and

1 specialists as examiners, ¹~~auditors or investigators to conduct or~~
2 ~~assist in the conduct of examinations or investigations~~ the cost of
3 which shall be borne by the company which is the subject of the
4 examination or investigation¹ ;

5 (2) enter into agreements or relationships with other government
6 officials or regulatory associations in order to improve efficiencies
7 and reduce regulatory burden by sharing resources, standardized or
8 uniform methods or procedures, and documents, records,
9 information or evidence obtained under this section;

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

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

15 (5) accept audit reports made by an independent certified public
16 accountant for the student loan servicer licensee or person subject to
17 this act in the course of that part of the examination covering the
18 same general subject matter as the audit and may incorporate the
19 audit report in the report of examination, report of investigation or
20 other writing of the commissioner.

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

25 e. No student loan servicer licensee or person subject to
26 investigation or examination under this section may knowingly
27 withhold, abstract, remove, mutilate, destroy or secrete any books,
28 records, computer records or other information.

29

30 ¹[9.] 11. (New section)¹ a. The commissioner may suspend,
31 revoke or refuse to renew any license issued under the provisions of
32 subsection c. of section 4 of this act, or take any other action, if the
33 commissioner finds that: (1) the licensee has violated any provision
34 of this act or any regulation made pursuant to this act; or (2) any
35 fact or condition exists which, if it had existed at the time of the
36 original application for the license, clearly would have warranted a
37 denial of the license. No abatement of the license fee shall be made
38 if the license is surrendered, revoked, or suspended prior to the
39 expiration of the period for which it was issued.

40 b. (1) Whenever it appears to the commissioner that any
41 person has violated, is violating or is about to violate any of the
42 provisions of this act, or any regulation adopted pursuant to this act,
43 or any licensee or any owner, director, officer, member, partner,
44 shareholder, trustee, employee or agent of a licensee has committed
45 any fraud, engaged in dishonest activities or made any
46 misrepresentation, the commissioner may bring a civil suit in a
47 court of competent jurisdiction to enjoin the violation or potential

1 violation, seek civil penalties pursuant to paragraph (2) of this
2 subsection, or both.

3 (2) Any person who violates any provision of this act shall be
4 liable, in a civil action brought by the commissioner in a court of
5 competent jurisdiction, for a penalty of not more than ¹["\$5,000]
6 \$10,000¹ for the first violation, ¹["\$10,000] and \$20,000¹ for the
7 second ¹[violation and \$15,000 for] and¹ each subsequent
8 ¹[violation] offense¹. The penalty shall be paid to the
9 commissioner to be used in accordance with this act and shall be
10 collected pursuant to the "Penalty Enforcement Law of 1999,"
11 P.L.1999, c.274 (C.2A:58-10 et seq.). The court shall also award
12 court costs and reasonable attorneys' fees to the commissioner.
13

14 ¹12. (New section) A student loan borrower who suffers any
15 ascertainable loss of moneys as a result of the use or employment
16 by a student loan servicer of any method, act, or practice declared
17 unlawful under this act may bring an action or assert a counterclaim
18 therefor in any court of competent jurisdiction. In any action under
19 this section the court shall, in addition to any other appropriate legal
20 or equitable relief, award threefold the damages sustained by the
21 student loan borrower. In all actions under this section, the court
22 shall also award reasonable attorneys' fees, filing fees, and
23 reasonable costs of suit.¹
24

25 ¹13. (New section) The remedies provided in this act are not
26 intended to be the exclusive remedies available to a student loan
27 borrower, and a student loan borrower shall not be required to
28 exhaust administrative remedies established pursuant to this act or
29 any other applicable law prior to proceeding under this act.¹
30

31 ¹[10.] 14. (New section)¹ A student loan servicer shall comply
32 with all applicable federal laws and regulations relating to student
33 loan servicing, including, but not limited to, the "Truth in Lending
34 Act" (15 U.S.C. s.1601 et seq.). In addition to any other remedies
35 provided by law, a violation of any federal law or regulation shall
36 be deemed a violation of this section and a basis upon which the
37 commissioner may take enforcement action pursuant to section ¹[9]
38 11¹ of this act.
39

40 ¹15. (New section) a. (1) A student loan servicer licensee shall
41 annually file a report with the commissioner, which shall set forth
42 any information as the commissioner shall require concerning the
43 business conducted as a licensee during the preceding calendar
44 year. The report shall be under oath and in a form and within the
45 time specified by the commissioner by regulation.

46 (2) A student loan servicer licensee shall additionally submit to
47 the Nationwide Mortgage Licensing System and Registry a student
48 loan servicer call report of condition, in the form and manner, and

1 with any information, at any time as may be required by that entity,
2 and any other report to, or through, the entity pursuant to any
3 arrangement for reporting and sharing information as may be
4 required by law or regulation.

5 b. Any negligently made false statement or knowing omission
6 of material fact in connection with any report or supporting
7 information filed with the commissioner, the Nationwide Mortgage
8 Licensing System and Registry, through that entity with any federal
9 or State agency, shall be deemed a violation of this act.

10 c. A licensee that fails to make and file its annual report with
11 the commissioner, or any report with or through the Nationwide
12 Mortgage Licensing System and Registry, in the form and within
13 the time provided in this section, shall be subject to a penalty
14 payable to the commissioner of not more than \$100 for each day's
15 failure concerning the annual report, and any penalty for a failure
16 concerning a report to be filed with or through the Nationwide
17 Mortgage Licensing System and Registry, payable to that entity,
18 and the commissioner, as authorized pursuant to section 11 of this
19 act may revoke or suspend the licensee's authority to do business in
20 this State. The penalty shall be collected in a summary proceeding
21 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
22 c.274 (C.2A:58-10 et seq.). A warrant may issue in lieu of a
23 summons.¹

24
25 ¹[11. All costs of the implementation of this act shall be
26 regarded as administrative costs of the Department of Banking and
27 Insurance. Moneys collected from license fees, inspections, or
28 violations pursuant to this act shall be expended by the
29 commissioner for the purpose of administering the provisions of
30 this act.]

31 16. (New section) Student loan servicer licensees shall be
32 assessed annually an amount sufficient to cover annual costs of the
33 implementation of this act. Assessments shall be effectuated in
34 accordance with P.L.2005, c.199 (C.17:1C-33 et seq.) as amended
35 by P.L. , c. (C.) (pending before the Legislature as this bill),
36 and its implementing rules. Moneys collected from license fees,
37 inspections, or violations pursuant to this act shall be expended by
38 the commissioner for the purpose of administering the provisions of
39 this act.¹

40
41 ¹17. Section 2 of P.L.2005, c.199 (C.17:1C-34) is amended to
42 read as follows.

43 2. For the purposes of this act:

44 "Assessment" means the assessment imposed pursuant to section
45 3 of this act for the special functions of the division as provided in
46 that section.

47 "Commissioner" means the Commissioner of Banking and
48 Insurance.

1 "Department" means the Department of Banking and Insurance.

2 "Depository institution" means any entity holding a state charter
3 for a bank, savings bank, savings and loan association or credit
4 union, irrespective of whether the entity accepts deposits.

5 "Division" means the Division of Banking in the Department of
6 Banking and Insurance.

7 "Nationwide Mortgage Licensing System and Registry" means
8 the mortgage licensing system developed and maintained by the
9 Conference of State Bank Supervisors and the American
10 Association of Residential Mortgage Regulators, or their
11 successors, and utilized in this State pursuant to the provisions of
12 the "New Jersey Residential Mortgage Lending Act," sections 1
13 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.).

14 "Other financial entity" means a person who is licensed or
15 registered pursuant to: the "New Jersey Consumer Finance
16 Licensing Act," sections 1 through 49 of P.L.1996, c.157
17 (C.17:11C-1 et seq.); the "New Jersey Residential Mortgage
18 Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-
19 51 et seq.), other than a financial entity with respect to the payment
20 of required fees to the Nationwide Mortgage Licensing System and
21 Registry as set forth by that nationwide system and registry; "The
22 Check Cashers Regulatory Act of 1993," P.L.1993, c.383
23 (C.17:15A-30 et seq.); the "New Jersey Money Transmitters Act,"
24 P.L.1998, c.14 (C.17:15C-1 et seq.); the "Insurance Premium
25 Finance Company Act," P.L.1968, c.221 (C.17:16D-1 et seq.); the
26 "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1
27 et seq.); the "Door-to-Door Retail Installment Sales Act of 1968,"
28 P.L.1968, c.223 (C.17:16C-61.1 et seq.); the "Home Repair
29 Financing Act," P.L.1960, c.41 (C.17:16C-62 et seq.); the "Door-to-
30 Door Home Repair Sales Act of 1968," P.L.1968, c.224 (C.17:16C-
31 95 et seq.); P.L.1979, c.16 (C.17:16G-1 et seq.); the "Foreclosure
32 Rescue Fraud Prevention Act," P.L.2011, c.146 (C.46:10B-53 et
33 al.); **【**the "Mortgage Servicers Licensing Act," P.L.2019, c.65
34 (C.17:16F-27 et al.)**】** the provisions of P.L. , c. (C.)
35 (pending before the Legislature as this bill) ; or the "pawnbroking
36 law," R.S.45:22-1 et seq.

37 **【**"Nationwide Mortgage Licensing System and Registry" means
38 the mortgage licensing system developed and maintained by the
39 Conference of State Bank Supervisors and the American
40 Association of Residential Mortgage Regulators, or their
41 successors, and utilized in this State pursuant to the provisions of
42 the "New Jersey Residential Mortgage Lending Act," sections 1
43 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.)**】**

44 "Regulated entity" means a depository institution, other financial
45 entity or person chartered, licensed or registered by the Division of
46 Banking or who should be chartered, licensed or registered.¹
47 (cf: P.L.2019, c.65, s.21)

1 ¹**[12.]** 18. (New section)¹ The Commissioner of Banking and
2 Insurance shall, in accordance with the “Administrative Procedure
3 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), adopt the rules and
4 regulations necessary to implement the provisions of this act.

5
6 ¹19. (New section) If any provision of this act or the application
7 thereof to any person or circumstance is held invalid for any reason
8 in a court of competent jurisdiction, the invalidity shall not affect
9 other provisions or any other application of this act which can be
10 given effect without the invalid provision or application, and for
11 this purpose the provisions of this act are declared severable.¹

12
13 ¹**[13.]** 20.¹ This act shall take effect on the 120th day next
14 following enactment, provided that the Commissioner of Banking
15 and Insurance may take any anticipatory actions necessary to
16 implement the provisions of this act.