

HOUSE BILL No. 5585

April 20, 2016, Introduced by Reps. Brinks, Plawecki, Yanez, Schor, Singh, Faris, Pagan, Sarah Roberts, Guerra and Brunner and referred to the Committee on Financial Liability Reform.

A bill to regulate student loan lenders and servicers; to require the licensing of certain student loan servicers; to create the student loan ombudsman fund; to prescribe the powers and duties of certain other public officers and agencies; to provide for the promulgation of rules; and to provide remedies and penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "student loan servicer licensing act".

3 Sec. 3. As used in this act:

4 (a) "Department" means the department of insurance and
5 financial services.

1 (b) "Depository institution" means a state or national bank,
2 state or federal savings bank, state or federal savings and loan
3 association, or state or federal credit union.

4 (c) "Director" means the director of the department or his or
5 her designated representative.

6 (d) "Servicing" means any of the following:

7 (i) Receiving any scheduled periodic payments from a student
8 loan borrower under the terms of a student education loan.

9 (ii) Applying the payments of principal and interest and any
10 other payments with respect to the amounts received from a student
11 loan borrower, as may be required under the terms of a student
12 education loan.

13 (iii) Performing any other administrative services with
14 respect to a student education loan.

15 (e) "Student education loan" means any loan that is primarily
16 for personal use to finance education or other school-related
17 expenses.

18 (f) "Student loan borrower" means either of the following:

19 (i) A resident of this state who has received or agreed to pay
20 a student education loan.

21 (ii) Any person that shares responsibility with an individual
22 described in subparagraph (i) for repaying his or her student
23 education loan.

24 (g) "Student loan ombudsman" means that term as defined in
25 section 3 of the student loan ombudsman act.

26 (h) "Student loan servicer" means any person, wherever
27 located, that is responsible for the servicing of any student

1 education loan to any student loan borrower. The term includes a
2 person that is required to obtain a license under this act or is
3 exempt from the licensing requirements of this act under section 7.

4 Sec. 5. (1) Subject to section 7, a person shall not act as a
5 student loan servicer, directly or indirectly, without first
6 obtaining a license from the director under this section.

7 (2) A person that is applying for an initial license under
8 this act to engage in the business of a student loan servicer in
9 this state shall submit a written application to the director, in
10 the form prescribed by the director, and include each of the
11 following with that application:

12 (a) The applicant's financial statements, audited or reviewed
13 by an independent certified public accountant.

14 (b) A history of criminal convictions of each of the
15 following, as applicable:

16 (i) The applicant, if the applicant is an individual.

17 (ii) Each partner, if the applicant is a partnership.

18 (iii) Each member, if the applicant is a limited liability
19 company or association.

20 (iv) Each officer, director, and principal employee, if the
21 applicant is a corporation.

22 (c) Any information pertaining to a history of criminal
23 convictions provided under subdivision (b) that the director
24 considers necessary to determine whether to issue a license to the
25 applicant under section 9. The director may also conduct a criminal
26 history check of any individual described in subdivision (b) in
27 connection with that determination.

1 (d) A nonrefundable license fee of \$1,000.00.

2 (e) A nonrefundable investigation fee of \$800.00.

3 (3) The student loan servicer regulatory fund is created in
4 the state treasury. All of the following apply to the student loan
5 servicer regulatory fund:

6 (a) Except as provided in section 29, licensing and
7 investigation fees received under this act shall be forwarded to
8 the state treasurer for deposit into the fund.

9 (b) The director shall use the money in the fund to administer
10 and enforce this act.

11 (c) The state treasurer shall direct the investment of the
12 fund and shall credit to the fund interest and earnings from fund
13 investments.

14 (d) Money in the fund at the close of the fiscal year shall
15 remain in the fund and shall not lapse to the general fund.

16 (e) The department is the administrator of the fund for
17 auditing purposes.

18 Sec. 7. The following persons are exempt from the licensing
19 requirements of this act:

20 (a) A depository institution.

21 (b) A wholly owned subsidiary of a depository institution.

22 (c) An operating subsidiary that is wholly owned by 1 or more
23 subsidiaries described in subdivision (b).

24 Sec. 9. If the director receives a completed application and
25 the license and investigation fees for an initial license under
26 this act, the director shall investigate the financial condition
27 and responsibility, financial and business experience, character,

1 and general fitness of the applicant and may issue a license if he
2 or she finds that all of the following are met:

3 (a) The applicant's financial condition is sound.

4 (b) The applicant's business will be conducted honestly,
5 fairly, equitably, carefully, and efficiently within the purposes
6 and intent of this act, and in a manner that commands the
7 confidence and trust of the community.

8 (c) Each of the following, as applicable:

9 (i) If the applicant is an individual, the applicant.

10 (ii) If the applicant is a partnership, each partner.

11 (iii) If the applicant is a corporation, each of the
12 following:

13 (A) The president.

14 (B) The chairperson of the executive committee.

15 (C) Each senior officer who is responsible for the
16 corporation's business.

17 (D) The chief financial officer.

18 (E) Any other individuals who perform similar functions to
19 those performed by an individual described in sub-subparagraphs (A)
20 to (D), as determined by the director.

21 (F) Each of the corporation's directors or trustees.

22 (G) Each shareholder that owns 10% or more of each class of
23 the securities of the corporation.

24 (iv) If the applicant is a limited liability company or
25 association, each member.

26 (d) No individual acting on behalf of the applicant has
27 knowingly made any incorrect statement of a material fact in the

1 application or in any report or statement made under this act.

2 (e) No individual acting on behalf of the applicant has
3 knowingly omitted to state any material fact necessary to give the
4 director any information that the director has lawfully requested
5 under this act.

6 (f) The applicant has paid the investigation fee and the
7 license fee required under section 5(2).

8 (g) The applicant has met any other similar requirements as
9 established by the director by rule.

10 Sec. 11. (1) A license issued under this act expires on
11 September 30 of the odd-numbered year following its issuance,
12 unless the license is renewed or earlier surrendered, suspended, or
13 revoked under this act.

14 (2) Within 15 days after a licensee ceases to engage in the
15 business of student loan servicing in this state for any reason,
16 including a business decision to terminate operations in this
17 state, license revocation, bankruptcy, or voluntary dissolution,
18 the licensee shall provide written notice of surrender to the
19 director and shall surrender to the director its license for each
20 location in which the licensee has ceased to engage in the business
21 of student loan servicing. The written notice of surrender shall
22 identify the location where the records of the licensee will be
23 stored and the name, address, and telephone number of an individual
24 who is authorized to provide access to the records. The surrender
25 of a license does not reduce or eliminate the licensee's civil or
26 criminal liability arising from acts or omissions occurring before
27 the surrender of the license, including any administrative actions

1 undertaken by the director to revoke or suspend a license, assess a
2 civil penalty, order restitution, or exercise any other authority
3 granted to the director under this act.

4 Sec. 13. (1) A licensee may renew a license for the ensuing
5 24-month period by filing an application with the director, that
6 includes all of the documents and fees described in section 5(2)
7 for an initial license, on or before the date the current license
8 expires. However, if the director receives the completed
9 application after September 1 of the year in which the current
10 license expires, the applicant for renewal shall pay an additional
11 \$100.00 late fee.

12 (2) If the director receives a completed application for a
13 renewal license on or before the date the current license expires,
14 the current license continues in full force and effect until the
15 date that 1 of the following occurs:

16 (a) The director issues a renewal license.

17 (b) The director notifies the licensee in writing that he or
18 she refuses to issue a renewal license and the grounds for that
19 refusal. The director may refuse to issue a renewal license on any
20 ground on which he or she may refuse to issue an initial license
21 under section 5.

22 Sec. 15. (1) If the director determines that a check submitted
23 to him or her to pay an investigation, license, renewal, or late
24 fee has been dishonored, the director shall automatically suspend
25 the applicant's current license and an applicant's renewal license,
26 if any, that has been issued but is not yet effective. The director
27 shall give the licensee notice of the automatic suspension pending

1 proceedings for revocation or refusal to renew and the licensee is
2 entitled to a hearing on those actions, conducted under the
3 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
4 24.328.

5 (2) An applicant or licensee shall notify the director, in
6 writing, if any of the information provided in its initial
7 application for a license or its most recent application for a
8 renewal license, as applicable, is no longer accurate. The
9 applicant or licensee shall provide this notice to the director
10 within 10 business days after the occurrence of the event that
11 resulted in the information previously provided becoming
12 inaccurate.

13 (3) The director may consider an application for an initial or
14 renewal license abandoned if the applicant fails to respond to any
15 request for information required under this act or any rules
16 promulgated under this act. The director shall notify the
17 applicant, in writing, that if the applicant fails to submit the
18 information requested within 60 days after the date on which the
19 request for information is made, the application is considered
20 abandoned. An applicant that paid an application filing fee paid
21 before the date an application is considered abandoned under this
22 subsection shall not receive a refund of that fee. Abandonment of
23 an application under this subsection does not preclude the
24 applicant from submitting a new application for a license under
25 this act.

26 Sec. 17. (1) A person that is licensed under this act to
27 engage in business as a student loan servicer shall not engage in

1 that business in this state under any other name or at any other
2 place of business than the name or address described in the
3 license.

4 (2) A licensee may change the location of its place of
5 business if it provides the director with written notice at least
6 60 days before the change of location.

7 (3) A licensee may conduct business as a student loan servicer
8 at only 1 location under a single license, but the director may
9 issue more than 1 license to the same licensee if the licensee
10 complies with the requirements of this act for each new license.

11 (4) A license under this act is not transferable or
12 assignable.

13 Sec. 19. (1) A student loan servicer shall maintain adequate
14 records of each student education loan transaction during the term
15 of the loan and for at least 2 years following the date of the
16 final payment on the student education loan, or until the date of
17 the assignment of the student education loan, whichever occurs
18 first, or for any longer period required under any other provision
19 of law.

20 (2) If requested by the director, a student loan servicer
21 shall make the records described in subsection (1) available to the
22 director, or send those records to the director by registered or
23 certified mail, return receipt requested, or by any express
24 delivery carrier that provides a dated delivery receipt, within 5
25 business days after the director requests access to those records.
26 On request, the director may grant a licensee additional time to
27 make those records available or send the records to the director.

1 Sec. 21. A student loan servicer shall not do any of the
2 following:

3 (a) Directly or indirectly employ any scheme, device, or
4 artifice to defraud or mislead student loan borrowers.

5 (b) Engage in any unfair or deceptive practice toward any
6 person or misrepresent or omit any material information in
7 connection with the servicing of a student education loan,
8 including, but not limited to, misrepresenting the amount, nature,
9 or terms of any fee or payment due or claimed to be due on a
10 student education loan, the terms and conditions of the loan
11 agreement, or the borrower's obligations under the loan.

12 (c) Obtain property by fraud or misrepresentation.

13 (d) Knowingly misapply or recklessly apply student education
14 loan payments to the outstanding balance of a student education
15 loan.

16 (e) Harm a student loan borrower's creditworthiness by
17 knowingly or recklessly providing inaccurate information to a
18 credit reporting agency.

19 (f) Fail to report both the favorable and unfavorable payment
20 history of a student loan borrower to a nationally recognized
21 credit reporting agency at least annually if the student loan
22 servicer regularly reports information to a credit reporting
23 agency.

24 (g) Refuse to communicate with an authorized representative of
25 the student loan borrower who provides a written authorization
26 signed by the student loan borrower. However, a student loan
27 servicer may adopt procedures reasonably related to verifying that

1 a representative is in fact authorized to act on behalf of a
2 student loan borrower.

3 (h) Negligently make any false statement or knowingly and
4 willfully make any omission of a material fact in connection with
5 any information or reports filed with a governmental agency or in
6 connection with any investigation conducted by the director, the
7 department, or another governmental agency.

8 (i) Fail or neglect to comply with all applicable federal
9 statutes and regulations relating to student loan servicing,
10 including, but not limited to, the truth in lending act, 15 USC
11 1601 to 1667f, and the regulations promulgated under that act, 12
12 CFR part 226.

13 Sec. 23. (1) The director's authority to conduct
14 investigations and examinations of license applicants, licensed
15 student loan servicers, or other student loan servicers under this
16 act is subject to all of the following:

17 (a) For purposes of initial licensing, license renewal,
18 license suspension, license revocation or termination, or general
19 or specific inquiry or investigation to determine compliance with
20 this act, the director may access, receive, and use any books,
21 accounts, records, files, documents, information, or evidence,
22 including, but not limited to, any of the following:

23 (i) Criminal, civil, and administrative history information.

24 (ii) Personal history and experience information, including
25 independent credit reports obtained from a consumer reporting
26 agency described in section 603(p) of the fair credit reporting
27 act, 15 USC 1681a.

1 (iii) Any other documents, information, or evidence the
2 director considers relevant to the inquiry or investigation
3 regardless of the location, possession, control, or custody of the
4 documents, information, or evidence.

5 (b) For the purposes of investigating violations or complaints
6 arising under this act or for the purposes of examination, the
7 director may review, investigate, or examine any student loan
8 servicer licensee or other person that is subject to this act as
9 often as necessary in order to carry out the purposes of this act.
10 The director may direct, subpoena, or order the attendance of and
11 examine under oath any individual whose testimony is required about
12 a student education loan, the business of a student loan servicer,
13 or the subject matter of an examination or investigation and may
14 direct, subpoena, or order that individual to produce books,
15 accounts, records, files, and any other documents the director
16 considers relevant to the inquiry.

17 (2) While conducting an examination or investigation under
18 this act, the director may control access to any documents and
19 records of the student loan servicer licensee or other person that
20 is the subject of the examination or investigation. The director
21 may take possession of the documents and records or place an
22 individual in exclusive charge of the documents and records in the
23 place where they are usually kept. If the director is in control of
24 documents and records under this subsection, a person shall not
25 remove or attempt to remove any of the documents and records except
26 pursuant to a court order or with the consent of the director.
27 Unless the director has reasonable grounds to believe the documents

1 or records of the student loan servicer licensee or other person
2 have been, or are at risk of being, altered or destroyed for
3 purposes of concealing a violation of this act, the student loan
4 servicer licensee or other owner of the documents and records shall
5 have access to the documents or records as necessary to conduct its
6 ordinary business affairs.

7 (3) For purposes of this section, the director may do any of
8 the following:

9 (a) Retain attorneys, accountants, or other professionals and
10 specialists as examiners, auditors, or investigators to conduct or
11 assist in the conduct of examinations or investigations.

12 (b) Enter into agreements or relationships with other
13 government officials or regulatory associations in order to improve
14 efficiencies and reduce regulatory burden by sharing resources,
15 standardized or uniform methods or procedures, and documents,
16 records, information, or evidence obtained under this section.

17 (c) Use, hire, contract, or employ public or privately
18 available analytical systems, methods, or software to examine or
19 investigate a student loan servicer licensee, a student loan
20 servicer that is exempt from licensure under section 7, or any
21 other person that is subject to this act.

22 (d) Accept and rely on examination or investigation reports
23 made by other local, state, or federal government officials.

24 (e) Accept audit reports made by an independent certified
25 public accountant for a student loan servicer licensee, a student
26 loan servicer that is exempt from licensure under section 7, or any
27 other person that is subject to this act, in the course of

1 conducting that part of the examination that covers the same
2 general subject matter as the audit; and incorporate the audit
3 report in the report of examination, report of investigation, or
4 other writing of the director.

5 (4) A student loan servicer licensee, a student loan servicer
6 that is exempt from licensure under section 7, or any other person
7 that is subject to investigation or examination under this section
8 shall not knowingly withhold, abstract, remove, mutilate, destroy,
9 or secrete any books, records, computer records, or other
10 information.

11 Sec. 25. (1) After notice and opportunity for a hearing under
12 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
13 to 24.328, the director may suspend, revoke, or refuse to renew a
14 license issued under this act, require the payment of restitution
15 by a licensee, or impose an administrative fine on a licensee in an
16 amount that does not exceed \$3,000.00 if the director finds either
17 of the following:

18 (a) That a licensee has violated this act or a rule
19 promulgated under this act.

20 (b) That a fact or condition exists that, if it had existed at
21 the time of the original application for the license, clearly would
22 have warranted a denial of the license.

23 (2) A licensee shall not receive a refund of any part of the
24 license fee if a license is surrendered, revoked, or suspended
25 under subsection (1) before the expiration of the period for which
26 it was issued.

27 (3) In addition to any sanction under subsection (1) if the

1 person is a licensee, a student loan servicer that is licensed
2 under this act, a student loan servicer that is exempt from
3 licensure under section 7, or any other person that violates this
4 act or directly or indirectly counsels, aids, or abets in a
5 violation is responsible for a civil fine of not more than
6 \$3,000.00 for each violation. The civil fine shall be sued for and
7 recovered by the director and shall be collected and enforced by
8 summary proceedings by the attorney general.

9 Sec. 27. The director shall promulgate rules under the
10 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
11 24.328, as necessary to implement, administer, and enforce this
12 act.

13 Sec. 29. The student loan ombudsman fund is created in the
14 state treasury. All of the following apply to the student loan
15 ombudsman fund:

16 (a) Fifty dollars of each licensing fee and each investigation
17 fee received under section 5(2) shall be forwarded to the state
18 treasurer for deposit into the fund.

19 (b) The director shall use the money in the fund to administer
20 the student loan ombudsman act.

21 (c) The state treasurer shall direct the investment of the
22 fund and shall credit to the fund interest and earnings from fund
23 investments.

24 (d) Money in the fund at the close of the fiscal year shall
25 remain in the fund and shall not lapse to the general fund.

26 (e) The department is the administrator of the fund for
27 auditing purposes.

1 Sec. 31. On or before January 1 of each year beginning in
2 2017, the director shall submit a report to the senate and house
3 standing committees with oversight over matters relating to banking
4 and higher education. The report shall address the implementation
5 of this act, the overall effectiveness of the student loan
6 ombudsman position, and any additional steps that the director
7 considers necessary for the department to gain regulatory control
8 over the licensing and enforcement of student loan servicers under
9 this act.

10 Enacting section 1. This act takes effect 90 days after the
11 date it is enacted into law.

12 Enacting section 2. This act does not take effect unless
13 Senate Bill No.____ or House Bill No. 5583 (request no. 04641'15) of
14 the 98th Legislature is enacted into law.