

HOUSE BILL No. 6448

October 17, 2018, Introduced by Rep. Yanez and referred to the Committee on Appropriations.

A bill to regulate student loan lenders and servicers; to require the licensing of certain student loan servicers; 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.

6 (b) "Depository institution" means a state or national bank,
7 state or federal savings bank, state or federal savings and loan
8 association, or state or federal credit union.

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

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

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

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

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

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

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

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

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

21 (g) "Student loan servicer" means any person, wherever
22 located, that is responsible for the servicing of any student
23 education loan to any student loan borrower. The term includes a
24 person that is required to obtain a license under this act or is
25 exempt from the licensing requirements of this act under section 7.

26 Sec. 5. (1) Subject to section 7, a person shall not act as a
27 student loan servicer, directly or indirectly, without first

1 obtaining a license from the director under this section.

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

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

9 (b) A history of criminal convictions of each of the
10 following, as applicable:

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

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

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

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

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

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

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

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

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

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

6 (c) The state treasurer shall direct the investment of the
7 fund and shall credit to the fund interest and earnings from fund
8 investments.

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

11 (e) The department is the administrator of the fund for
12 auditing purposes.

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

15 (a) A depository institution.

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

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

19 Sec. 9. If the director receives a completed application and
20 the license and investigation fees for an initial license under
21 this act, the director shall investigate the financial condition
22 and responsibility, financial and business experience, character,
23 and general fitness of the applicant and may issue a license if he
24 or she finds that all of the following are met:

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

26 (b) The applicant's business will be conducted honestly,
27 fairly, equitably, carefully, and efficiently within the purposes

1 and intent of this act, and in a manner that commands the
2 confidence and trust of the community.

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

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

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

6 (iii) If the applicant is a corporation, each of the
7 following:

8 (A) The president.

9 (B) The chairperson of the executive committee.

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

12 (D) The chief financial officer.

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

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

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

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

21 (d) No individual acting on behalf of the applicant has
22 knowingly made any incorrect statement of a material fact in the
23 application or in any report or statement made under this act.

24 (e) No individual acting on behalf of the applicant has
25 knowingly omitted to state any material fact necessary to give the
26 director any information that the director has lawfully requested
27 under this act.

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

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

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

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

26 Sec. 13. (1) A licensee may renew a license for the ensuing
27 24-month period by filing an application with the director, that

1 includes all of the documents and fees described in section 5(2)
2 for an initial license, on or before the date the current license
3 expires. However, if the director receives the completed
4 application after September 1 of the year in which the current
5 license expires, the applicant for renewal shall pay an additional
6 \$100.00 late fee.

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

11 (a) The director issues a renewal license.

12 (b) The director notifies the licensee in writing that he or
13 she refuses to issue a renewal license and the grounds for that
14 refusal. The director may refuse to issue a renewal license on any
15 ground on which he or she may refuse to issue an initial license
16 under section 5.

17 Sec. 15. (1) If the director determines that a check submitted
18 to him or her to pay an investigation, license, renewal, or late
19 fee has been dishonored, the director shall automatically suspend
20 the applicant's current license and an applicant's renewal license,
21 if any, that has been issued but is not yet effective. The director
22 shall give the licensee notice of the automatic suspension pending
23 proceedings for revocation or refusal to renew and the licensee is
24 entitled to a hearing on those actions, conducted under the
25 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
26 24.328.

27 (2) An applicant or licensee shall notify the director, in

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

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

21 Sec. 17. (1) A person that is licensed under this act to
22 engage in business as a student loan servicer shall not engage in
23 that business in this state under any other name or at any other
24 place of business than the name or address described in the
25 license.

26 (2) A licensee may change the location of its place of
27 business if it provides the director with written notice at least

1 60 days before the change of location.

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

6 (4) A license under this act is not transferable or
7 assignable.

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

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

23 Sec. 21. A student loan servicer shall not do any of the
24 following:

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

27 (b) Engage in any unfair or deceptive practice toward any

1 person or misrepresent or omit any material information in
2 connection with the servicing of a student education loan,
3 including, but not limited to, misrepresenting the amount, nature,
4 or terms of any fee or payment due or claimed to be due on a
5 student education loan, the terms and conditions of the loan
6 agreement, or the borrower's obligations under the loan.

7 (c) Obtain property by fraud or misrepresentation.

8 (d) Knowingly misapply or recklessly apply student education
9 loan payments to the outstanding balance of a student education
10 loan.

11 (e) Harm a student loan borrower's creditworthiness by
12 knowingly or recklessly providing inaccurate information to a
13 credit reporting agency.

14 (f) Fail to report both the favorable and unfavorable payment
15 history of a student loan borrower to a nationally recognized
16 credit reporting agency at least annually if the student loan
17 servicer regularly reports information to a credit reporting
18 agency.

19 (g) Refuse to communicate with an authorized representative of
20 the student loan borrower who provides a written authorization
21 signed by the student loan borrower. However, a student loan
22 servicer may adopt procedures reasonably related to verifying that
23 a representative is in fact authorized to act on behalf of a
24 student loan borrower.

25 (h) Negligently make any false statement or knowingly and
26 willfully make any omission of a material fact in connection with
27 any information or reports filed with a governmental agency or in

1 connection with any investigation conducted by the director, the
2 department, or another governmental agency.

3 (i) Fail or neglect to comply with all applicable federal
4 statutes and regulations relating to student loan servicing,
5 including, but not limited to, the truth in lending act, 15 USC
6 1601 to 1667f, and the regulations promulgated under that act, 12
7 CFR part 226.

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

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

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

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

23 (iii) Any other documents, information, or evidence the
24 director considers relevant to the inquiry or investigation
25 regardless of the location, possession, control, or custody of the
26 documents, information, or evidence.

27 (b) For the purposes of investigating violations or complaints

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

12 (2) While conducting an examination or investigation under
13 this act, the director may control access to any documents and
14 records of the student loan servicer licensee or other person that
15 is the subject of the examination or investigation. The director
16 may take possession of the documents and records or place an
17 individual in exclusive charge of the documents and records in the
18 place where they are usually kept. If the director is in control of
19 documents and records under this subsection, a person shall not
20 remove or attempt to remove any of the documents and records except
21 pursuant to a court order or with the consent of the director.
22 Unless the director has reasonable grounds to believe the documents
23 or records of the student loan servicer licensee or other person
24 have been, or are at risk of being, altered or destroyed for
25 purposes of concealing a violation of this act, the student loan
26 servicer licensee or other owner of the documents and records shall
27 have access to the documents or records as necessary to conduct its

1 ordinary business affairs.

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

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

7 (b) Enter into agreements or relationships with other
8 government officials or regulatory associations in order to improve
9 efficiencies and reduce regulatory burden by sharing resources,
10 standardized or uniform methods or procedures, and documents,
11 records, information, or evidence obtained under this section.

12 (c) Use, hire, contract, or employ public or privately
13 available analytical systems, methods, or software to examine or
14 investigate a student loan servicer licensee, a student loan
15 servicer that is exempt from licensure under section 7, or any
16 other person that is subject to this act.

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

19 (e) Accept audit reports made by an independent certified
20 public accountant for a student loan servicer licensee, a student
21 loan servicer that is exempt from licensure under section 7, or any
22 other person that is subject to this act, in the course of
23 conducting that part of the examination that covers the same
24 general subject matter as the audit; and incorporate the audit
25 report in the report of examination, report of investigation, or
26 other writing of the director.

27 (4) A student loan servicer licensee, a student loan servicer

1 that is exempt from licensure under section 7, or any other person
2 that is subject to investigation or examination under this section
3 shall not knowingly withhold, abstract, remove, mutilate, destroy,
4 or secrete any books, records, computer records, or other
5 information.

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

13 (a) That a licensee has violated this act or a rule
14 promulgated under this act.

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

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

22 (3) In addition to any sanction under subsection (1) if the
23 person is a licensee, a student loan servicer that is licensed
24 under this act, a student loan servicer that is exempt from
25 licensure under section 7, or any other person that violates this
26 act or directly or indirectly counsels, aids, or abets in a
27 violation is responsible for a civil fine of not more than

1 \$3,000.00 for each violation. The civil fine shall be sued for and
2 recovered by the director and shall be collected and enforced by
3 summary proceedings by the attorney general.

4 Sec. 27. The director shall promulgate rules under the
5 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
6 24.328, as necessary to implement, administer, and enforce this
7 act.

8 Sec. 29. On or before January 1 of each year beginning in
9 2019, the director shall submit a report to the senate and house
10 standing committees with oversight over matters relating to banking
11 and higher education. The report shall address the implementation
12 of this act and any additional steps that the director considers
13 necessary for the department to gain regulatory control over the
14 licensing and enforcement of student loan servicers under this act.

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

17 Enacting section 2. This act does not take effect unless
18 Senate Bill No. _____ or House Bill No. 6446 (request no. 06646'18) of
19 the 99th Legislature is enacted into law.