

AMENDED IN ASSEMBLY MAY 10, 2016  
AMENDED IN ASSEMBLY APRIL 20, 2016  
AMENDED IN ASSEMBLY MARCH 28, 2016  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2251**

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**Introduced by Assembly Member Mark Stone**  
*(Coauthor: Assembly Member Dababneh)*  
*(Coauthor: Senator Leno)*

February 18, 2016

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An act to add Division 12.5 (commencing with Section 28100) to the Financial Code, relating to student loan servicers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2251, as amended, Mark Stone. Student loan servicers: licensing and regulation: Student Loan Borrower's Bill of Rights.

(1) Existing law establishes the Department of Business Oversight as headed by the Commissioner of Business Oversight who, among other things, generally provides for the licensure and regulation of persons who are engaged in various consumer financial businesses, including, but not limited to, the business of making consumer or commercial loans.

This bill would enact the Student Loan Borrower's Bill of Rights providing for the licensure, regulation, and oversight of student loan servicers engaging in the servicing of student-education loans for student loan borrowers, as those terms are defined, by the commissioner. The bill would prohibit a person from acting as a student loan servicer without a license, unless exempt from the licensing requirement and would require a licensee to provide specific services to a student loan

borrower. The bill would require a person applying for a license to, among other things, ~~pay an unspecified fee to~~ pay the actual costs for *processing an application and the investigation of the application* ~~and to~~, sign the application under penalty of perjury, *and submit to a criminal background check by the Department of Justice*. By expanding the scope of the crime of perjury *and increasing who is authorized to receive criminal record information*, this bill would impose a state-mandated local program. The bill would specify the basis for the commissioner to deny, revoke, or suspend a license that includes, among other basis, a failure to comply with an investigation by the commissioner. The bill would make legislative findings in support of its provisions.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Student loan debt is a national crisis. More than 40,000,000
- 4 people in the United States owe some amount of student
- 5 educational loan debt. Total student educational debt in the United
- 6 States currently exceeds \$1.2 trillion, surpassing both the amount
- 7 of credit card debt and car loans. With college costs continuing to
- 8 rise, student educational debt continues to rise, and there is no
- 9 reduction in sight.
- 10 (b) While California’s financial aid programs are some of the
- 11 strongest in the nation and our state’s college graduates have among
- 12 the lowest educational debt burdens, California students and
- 13 graduates still incur significant debt. According to The Institute
- 14 for College Access & Success, 55 percent of California’s
- 15 graduating class of 2014 has student educational loan debt.
- 16 According to the United States Department of Education, as of
- 17 January 2015, there were approximately 4,156,00 student
- 18 educational loan borrowers in California, and the total student

1 educational loan debt outstanding for Californians was  
2 approximately \$1.2 billion.

3 (c) Student educational loan debt is a hindrance on the state’s  
4 economy, preventing borrowers from achieving financial  
5 independence, buying property, and starting businesses.

6 (d) Student educational loan servicers administer student loans,  
7 serving as a critical link between borrowers and lenders in  
8 managing accounts, processing payments, and communicating  
9 directly with borrowers. Despite this critical relationship, according  
10 to the federal Consumer Financial Protection Bureau (CFPB), there  
11 are no consistent, marketwide federal standards for student  
12 educational loan servicing.

13 (e) The CFPB released a report in September 2015 that found  
14 that student educational loan borrowers encounter servicers that  
15 discourage borrower-friendly alternative payment plans, fail to  
16 respond to questions and payment processing errors, and fail to  
17 provide sufficient information to borrowers regarding payments,  
18 benefits, interest rates, and other charges.

19 (f) It is the intent of the Legislature to promote all of the  
20 following:

21 (1) Meaningful access to federal affordable repayment and loan  
22 forgiveness benefits.

23 (2) Reliable information about student educational loans and  
24 loan repayment options.

25 (3) Quality customer service and fair treatment.

26 SEC. 2. Division 12.5 (commencing with Section 28100) is  
27 added to the Financial Code, to read:

28  
29 **DIVISION 12.5. CALIFORNIA STUDENT LOAN**  
30 **BORROWER’S BILL OF RIGHTS**

31  
32 *CHAPTER 1. GENERAL PROVISIONS*

33  
34 *Article 1. Short Title*

35  
36 *28100. This division may be known and cited as the “California*  
37 *Student Loan Borrower’s Bill of Rights.”*

Article 2. Requirement for License

1  
2  
3 28102. (a) A person shall only act as a student loan servicer,  
4 directly or indirectly, as a licensee pursuant to this division. A  
5 license shall not be transferable or assignable.  
6 (b) Notwithstanding subdivision (a), any of the following shall  
7 not be required to be a licensee to engage in servicing a student  
8 loan to borrowers:  
9 (1) A person authorized to service student loans to borrowers  
10 pursuant to federal law.  
11 (2) A bank, trust company, insurance company, or industrial  
12 loan company doing business under the authority of, or in  
13 accordance with, a license, certificate, or charter issued by the  
14 United States or any state, district, territory, or commonwealth of  
15 the United States that is authorized to transact business in this  
16 state.  
17 (3) A federally chartered savings and loan association, federal  
18 savings bank, or federal credit union that is authorized to transact  
19 business in this state.  
20 (4) A savings and loan association, savings bank, or credit union  
21 organized under the laws of this or any other state that is  
22 authorized to transact business in this state.  
23 (5) A wholly owned service corporation of a savings and loan  
24 association or savings bank organized under the laws of this state  
25 or the wholly owned service corporation of a federally chartered  
26 savings and loan association or savings bank that is authorized  
27 to transact business in this state.

Article 3. Definitions

28  
29  
30  
31 ~~28100.~~  
32 28104. For the purposes of this ~~chapter,~~ division, the following  
33 terms ~~shall~~ have the following meanings:  
34 (a) "Applicant" means a person applying for a license pursuant  
35 to this division.  
36 (b) "Borrower" means either of the following:  
37 (1) A person who is a resident of the state who has received or  
38 agreed to pay a student loan.

1 (2) A person who is a resident of the state who shares  
2 responsibility for repaying a student loan with a person described  
3 in paragraph (1).

4 (c) “Commissioner” means the Commissioner of Business  
5 Oversight.

6 ~~(a)~~

7 (d) “Control” means the possession, directly or indirectly, of  
8 the power to direct, or cause the direction of, the management and  
9 policies of a licensee under this ~~chapter~~, *division*, whether through  
10 voting or through the ownership of voting power of an entity that  
11 possesses voting power of the licensee, or otherwise. Control is  
12 presumed to exist if a person, directly or indirectly, owns, controls,  
13 or holds 10 percent or more of the voting power of a licensee or  
14 of an entity that owns, controls, or holds, with power to vote, 10  
15 percent or more of the voting power of a licensee. ~~No~~ A person  
16 shall *not* be deemed to control a licensee solely by reason of his  
17 or her status as an officer or director of the licensee.

18 ~~(b)~~

19 (e) “Department” means the Department of Business Oversight.

20 ~~(c) “Engage in the business” means, without limitation, servicing  
21 student education loans, including, but not limited to, the  
22 dissemination to the public, or any part of the public, by means of  
23 written, printed, or electronic communication or any  
24 communication by means of recorded telephone messages or  
25 spoken on radio, television, or similar communications media, of  
26 any information relating to the servicing of student loans.~~

27 ~~(d) “In this state” includes any activity of a person relating to  
28 servicing a student education loan that is directed to a person  
29 residing in the state.~~

30 ~~(e)~~

31 (f) “Licensee” means a *natural* person licensed under this  
32 ~~chapter~~. *division*.

33 ~~(f)~~

34 (g) “Person” means a natural person, a sole proprietorship, a  
35 corporation, a partnership, a limited liability company, an  
36 association, a trust, a joint venture, an unincorporated organization,  
37 a joint stock company, a government, or a political subdivision of  
38 a government, and any other entity.

39 ~~(g)~~

1 (h) “Qualified written request” means a written correspondence  
 2 made by a ~~student loan~~ borrower, other than notice on a payment  
 3 medium supplied by ~~the student loan servicer~~, a *licensee*,  
 4 transmitted by mail, facsimile, or electronically through an email  
 5 address or Internet Web site designated by the ~~student loan servicer~~  
 6 *licensee* to receive communications from ~~student loan~~ borrowers  
 7 that does all of the following:  
 8 (1) Enables the ~~student loan servicer~~ *licensee* to identify the  
 9 name and account of the ~~student loan~~ borrower.  
 10 (2) Includes, to the extent applicable, either of the following:  
 11 (A) Sufficient detail regarding the information sought by the  
 12 ~~student loan~~ borrower.  
 13 (B) A statement of the reasons for the belief of the ~~student loan~~  
 14 borrower that there is an error regarding the account of the ~~student~~  
 15 ~~loan~~ borrower.  
 16 (h)  
 17 (i) “Servicing” means any of the following ~~activities~~: *activities*  
 18 *related to a student loan of a borrower*:  
 19 (1) ~~Receiving~~ *Performing both of the following*:  
 20 (A) *Receiving* any scheduled periodic payments from a ~~student~~  
 21 ~~loan~~ borrower ~~pursuant to the terms of a student education loan~~.  
 22 *or any notification that a borrower made a scheduled periodic*  
 23 *payment*.  
 24 (2)  
 25 (B) ~~Applying the payments of principal and interest and other~~  
 26 ~~payments with respect to the amounts received from a student loan~~  
 27 ~~borrower, as may be required pursuant to the terms of a student~~  
 28 ~~education loan~~. *to the borrower’s account pursuant to the terms*  
 29 *of the student loan or the contract governing the servicing*.  
 30 (3) ~~Performing other administrative services with respect to a~~  
 31 ~~student education loan~~.  
 32 (2) *During a period when no payment is required on a student*  
 33 *loan, performing both of the following*:  
 34 (A) *Maintaining account records for the student loan*.  
 35 (B) *Communicating with the borrower regarding the student*  
 36 *loan on behalf of the student loan’s holder*.  
 37 (3) *Interactions with a borrower, including, but not limited to,*  
 38 *activities to help prevent default on obligations arising from a*  
 39 *student loan or conducted to facilitate the activities described in*  
 40 *paragraph (1) or (2)*.

- 1 (i)
- 2 (j) “~~Student-education loan~~” means any loan primarily for
- 3 personal use to finance education or other school-related expenses.
- 4 (j) “~~Student loan borrower~~” means either of the following:
- 5 (1) ~~A person who is resident of the state who has received or~~
- 6 ~~agreed to pay a student education loan.~~
- 7 (2) ~~A person who is a resident of the state who shares~~
- 8 ~~responsibility for repaying a student education loan with a person~~
- 9 ~~described in paragraph (1).~~
- 10 (k) “~~Student loan servicer~~” means, to the extent authorized by
- 11 federal law, a person, wherever located, *person* responsible for the
- 12 servicing of a student educational loan for a student loan borrower.
- 13 28102. ~~(a) A person shall not act as a student loan servicer,~~
- 14 ~~directly or indirectly, without a license from the commissioner~~
- 15 ~~pursuant to this chapter.~~
- 16 (b) ~~Notwithstanding subdivision (a), the following persons are~~
- 17 ~~exempt from the licensing requirement in subdivision (a):~~
- 18 (1) ~~A bank, trust company, insurance company, or industrial~~
- 19 ~~loan company doing business under the authority of, or in~~
- 20 ~~accordance with, a license, certificate, or charter issued by the~~
- 21 ~~United States or any state, district, territory, or commonwealth of~~
- 22 ~~the United States that is authorized to transact business in this~~
- 23 ~~state.~~
- 24 (2) ~~A federally chartered savings and loan association, federal~~
- 25 ~~savings bank, or federal credit union that is authorized to transact~~
- 26 ~~business in this state.~~
- 27 (3) ~~A savings and loan association, savings bank, or credit union~~
- 28 ~~organized under the laws of this or any other state that is authorized~~
- 29 ~~to transact business in this state.~~
- 30 (4) ~~A wholly owned service corporation of a savings and loan~~
- 31 ~~association or savings bank organized under the laws of this state~~
- 32 ~~or the wholly owned service corporation of a federally chartered~~
- 33 ~~savings and loan association or savings bank that is authorized to~~
- 34 ~~transact business in this state.~~
- 35 (e) ~~A person shall file an application for a license under this~~
- 36 ~~chapter with the commissioner to engage in servicing student~~
- 37 ~~education loans as a student loan servicer in this state.~~
- 38 (d) ~~A licensee shall not engage in servicing a student education~~
- 39 ~~loan as a student loan servicer under a name other than the name~~
- 40 ~~that appears on a license.~~

1 ~~(e) The commissioner may promulgate regulations on the~~  
2 ~~business activity that may be conducted at a location where a~~  
3 ~~licensee engages in servicing student education loans to prohibit~~  
4 ~~the conduct of business activity that facilitates evasions of the~~  
5 ~~purposes of this chapter.~~

6 ~~(f) A licensee shall make available to the commissioner all of~~  
7 ~~the licensee's records pertaining to servicing a student educational~~  
8 ~~loan for a student loan borrower, including, but not limited to, all~~  
9 ~~books, accounts, papers, and files, regardless of the location of~~  
10 ~~those records, within 10 calendar days of a request from the~~  
11 ~~commissioner.~~

12 ~~28104. (a) The commissioner shall issue a license to a person~~  
13 ~~to engage in business as a student loan servicer if all of the~~  
14 ~~following requirements have been met:~~

15 ~~(1) The person filed a complete application for a license in a~~  
16 ~~form prescribed by the commissioner.~~

17 ~~(2) The person signed the application under penalty of perjury.~~

18 ~~(3) The person made a payment of (\_\_\_\_) as a reasonable fee~~  
19 ~~to pay the actual costs for the department to investigate the~~  
20 ~~application.~~

21 ~~(4) The department has completed an investigation of the~~  
22 ~~application.~~

23 ~~(b) Upon reasonable notice and opportunity to be heard, the~~  
24 ~~commissioner may deny an application of a person to engage in~~  
25 ~~business as a student loan servicer for any of the following reasons:~~

26 ~~(1) The person made a false statement of a material fact on the~~  
27 ~~application.~~

28 ~~(2) The person or an officer, director, general partner, or other~~  
29 ~~person owning or controlling, directly or indirectly, 10 percent or~~  
30 ~~more of the outstanding interests or equity securities of the person~~  
31 ~~applying for the license has, within the last 10 years of the date of~~  
32 ~~application, committed any act involving dishonesty, fraud, or~~  
33 ~~deceit, or been convicted of, or pleaded nolo contendere to, a crime~~  
34 ~~substantially related to the qualifications, functions, or duties of a~~  
35 ~~person engaged in the business of servicing student education~~  
36 ~~loans.~~

37 ~~(3) The person or an officer, director, general partner, or other~~  
38 ~~person owning or controlling, directly or indirectly, 10 percent or~~  
39 ~~more of the outstanding interests or equity securities of the person~~  
40 ~~applying for the license has violated any provision of this chapter.~~

1 ~~(e) The commissioner shall, within 60 days from the filing of~~  
2 ~~a full and complete application for a license, including the receipt~~  
3 ~~of background and investigative reports from the Department of~~  
4 ~~Justice or other government agencies, and the payment of required~~  
5 ~~fees, either grant a license pursuant to this chapter or provide a~~  
6 ~~written explanation for the denial.~~

7 ~~(d) The proceedings for a denial of a license shall be conducted~~  
8 ~~in accordance with Chapter 5 (commencing with Section 11500)~~  
9 ~~of Part 1 of Division 3 of Title 2 of the Government Code.~~

10 28106. ~~(a) A license shall remain in effect until the license is~~  
11 ~~either suspended or revoked by the commissioner or surrendered~~  
12 ~~by the licensee. The commissioner may suspend or revoke a license~~  
13 ~~issued under this chapter if the commissioner finds that the licensee~~  
14 ~~violated any provision of this chapter or if any fact or condition~~  
15 ~~exists which, if it had existed at the time of the initial application~~  
16 ~~for the license, clearly would have warranted a denial of the license.~~

17 ~~(b) A licensee that ceases to engage in the business regulated~~  
18 ~~by this chapter and desires to no longer be licensed shall inform~~  
19 ~~the commissioner in writing and, at that time, surrender the license~~  
20 ~~and all other indicia of license to the commissioner. The licensee~~  
21 ~~shall file a plan for the withdrawal from regulated business, and~~  
22 ~~the plan shall include a timetable for the disposition of the business.~~  
23 ~~The plan shall also include a closing audit, review, or other~~  
24 ~~agreed-upon procedures performed by an independent certified~~  
25 ~~public accountant prescribed by rule or order of the commissioner.~~  
26 ~~Upon receipt of the written notice and plan, the commissioner shall~~  
27 ~~review the plan and, if satisfactory to the commissioner, shall~~  
28 ~~accept the surrender of the license. A license is not surrendered~~  
29 ~~until its tender is accepted in writing by the commissioner after a~~  
30 ~~review, and a finding has been made on the licensee's plan required~~  
31 ~~to be filed by this section, and a determination has been made that~~  
32 ~~there is no violation of this chapter.~~

33 ~~(e) The licensee shall notify the commissioner, in writing, of~~  
34 ~~any change in the information provided in the application for a~~  
35 ~~license, as applicable, not later than 10 business days after the~~  
36 ~~occurrence of the event that results in the information becoming~~  
37 ~~inaccurate.~~

38 ~~(d) The commissioner may deem an application for a license~~  
39 ~~abandoned if the applicant fails to respond to any request for~~  
40 ~~information required by the commissioner or department during~~

1 an investigation of the application. The commissioner shall notify  
2 the applicant, in writing, that if the applicant fails to submit  
3 responsive information no later than 60 days after the date the  
4 request for information was made, the application shall be deemed  
5 abandoned. An application filing fee paid prior to the date an  
6 application is deemed abandoned shall not be refunded.  
7 Abandonment of an application pursuant to this subdivision shall  
8 not preclude the applicant from submitting a new application and  
9 fee for a license.

10 (e) A licensee shall only engage in business as a student loan  
11 servicer at the place of business on the license. A change of location  
12 of a place of business of a licensee shall require prior written notice  
13 to the commissioner. Only one place of business shall be authorized  
14 to engage in business under a license. A license shall not be  
15 transferable or assignable.

16 28108. (a) A licensee shall do all of the following:

17 (1) Maintain staff adequate to meet the requirements of this  
18 chapter, as prescribed by regulation or order of the commissioner.

19 (2) File with the commissioner any report required by regulation  
20 or order of the commissioner.

21 (3) Comply with the provisions of this chapter, and with any  
22 regulation or order of the commissioner.

23 (4) Submit to periodic examination by the commissioner as  
24 required by this chapter.

25 (5) Advise the commissioner by amendment to its application  
26 of any material judgment filed against, or bankruptcy petition filed  
27 by, the licensee within five days of the filing.

28 (6) Comply with all applicable state and federal laws and tax  
29 return filing requirements.

30 (7) Comply with any other requirement established by regulation  
31 or order of the commissioner.

32 (8) Provide information on an Internet Web site concerning  
33 affordable repayment and loan forgiveness options that may be  
34 available to the student loan borrower and provide, at least once  
35 per calendar year, a written correspondence or email outlining  
36 those options, if applicable.

37 (9) Appoint a single point of contact for a student loan borrower  
38 wanting any of the following:

1     ~~(A) Ability to enter into an agreement for, resolution on an issue~~  
2 ~~concerning, or general information about, a repayment option that~~  
3 ~~requires subsequent submission of supporting documentation.~~

4     ~~(B) Modification of the terms of repayment of the student~~  
5 ~~education loan because of hardship.~~

6     ~~(10) If the sale, assignment, or other transfer of the servicing~~  
7 ~~of a student education loan results in a change in the identity of~~  
8 ~~the party to whom the student loan borrower is required to send~~  
9 ~~payments, or direct any communications concerning the student~~  
10 ~~education loan to, then the student loan servicer selling, assigning,~~  
11 ~~or otherwise transferring the servicing shall notify the student loan~~  
12 ~~borrower in writing at least 45 days before a student loan borrower~~  
13 ~~is required to send a payment on the student education loan all of~~  
14 ~~the following:~~

15     ~~(A) The identity of the new student loan servicer.~~

16     ~~(B) The name and address of the new student loan servicer to~~  
17 ~~whom subsequent payments or communications is required to be~~  
18 ~~sent.~~

19     ~~(C) The telephone numbers and Internet Web sites of the new~~  
20 ~~student loan servicer.~~

21     ~~(D) The effective date of the sale, assignment, or transfer.~~

22     ~~(E) The date on which the current student loan servicer will stop~~  
23 ~~accepting payments on the student education loan.~~

24     ~~(F) The date on which the new student loan servicer will begin~~  
25 ~~accepting payments on the student education loan.~~

26     ~~(11) Respond to a qualified written request by acknowledging~~  
27 ~~receipt of the request within five business days and within 30~~  
28 ~~business days provide, to the extent possible, by providing~~  
29 ~~information relating to the request and the applicable action the~~  
30 ~~student loan servicer will take to correct the account or an~~  
31 ~~explanation for the reasons the student loan servicer believes the~~  
32 ~~account of the student loan borrower is correct.~~

33     ~~(12) Unless otherwise directed by the student loan borrower of~~  
34 ~~a student education loan, upon receipt of a payment, the student~~  
35 ~~loan servicer shall apply amounts in excess of the minimum~~  
36 ~~payment amount first to the interest and fees owed on the payment~~  
37 ~~due date, next to the principal balance of the student education~~  
38 ~~loan balance bearing the highest annual percentage rate, and then~~  
39 ~~to each successive interest and fees and principal balance bearing~~  
40 ~~the next highest annual percentage rate, until the payment is~~

1 exhausted. A student loan borrower may instruct or expressly  
2 authorize the student loan servicer to apply excess payments in a  
3 different manner. A student loan borrower may also voluntarily  
4 increase the periodic payment amount by, including, but not limited  
5 to, increasing his or her recurring electronic payment with the right  
6 to return to their original amortization schedule at any time.

7 (b) The commissioner may revoke or suspend a license for a  
8 licensee's failure to comply with the requirements of section:

9 28110. (a) A licensee shall not do any of the following:

10 (1) Directly or indirectly employ any scheme, device, or artifice  
11 to defraud or mislead a student loan borrower.

12 (2) Engage in any unfair or deceptive practice toward any  
13 student loan borrower or misrepresent or omit any material  
14 information in connection with the servicing of a student education  
15 loan, including, but not limited to, misrepresenting the amount,  
16 nature or terms of any fee or payment due or claimed to be due on  
17 a student education loan, the terms and conditions of the student  
18 education loan agreement, or the student loan borrower's  
19 obligations under the student education loan.

20 (3) Obtain property of a student loan borrower by fraud or  
21 misrepresentation.

22 (4) Knowingly misapply or recklessly apply payments made by  
23 a student loan borrower to the outstanding balance of a student  
24 education loan.

25 (5) Knowingly or recklessly provide inaccurate information to  
26 a credit bureau regarding a student loan borrower.

27 (6) Fail to report both the favorable and unfavorable payment  
28 history of the student loan borrower to a nationally recognized  
29 consumer credit bureau at least annually if the loan servicer  
30 regularly reports information to a credit bureau.

31 (7) Refuse to communicate with an authorized representative  
32 of the student loan borrower who provides a written authorization  
33 signed by the student loan borrower, provided the licensee may  
34 adopt procedures reasonably related to verifying that the  
35 representative is in fact authorized to act on behalf of the student  
36 loan borrower.

37 (8) Negligently or intentionally make any false statement or  
38 knowingly and willfully make any omission of a material fact in  
39 connection with any information or reports filed with the  
40 commissioner, the department, or another governmental agency.

1 ~~(b) The commissioner may revoke or suspend a license for a~~  
2 ~~licensee's failure to comply with the requirements of section:~~

3 ~~28112. (a) The commissioner shall have the authority to~~  
4 ~~conduct investigations and examinations as follows:~~

5 ~~(1) For purposes of initial licensing, license suspension, license~~  
6 ~~revocation, or general or specific inquiry or investigation to~~  
7 ~~determine compliance application requirements, the commissioner~~  
8 ~~may access, receive, and use any books, accounts, records, files,~~  
9 ~~documents, information, or evidence, including, but not limited~~  
10 ~~to, any of the following relating to the business of servicing student~~  
11 ~~education loans:~~

12 ~~(A) Criminal, civil, and administrative history information.~~

13 ~~(B) Personal history and experience information, including, but~~  
14 ~~not limited to, independent credit reports obtained from a consumer~~  
15 ~~credit reporting agency.~~

16 ~~(C) Any other documents, information, or evidence that the~~  
17 ~~commissioner deems relevant to the inquiry or investigation~~  
18 ~~regardless of the location, possession, control, or custody of those~~  
19 ~~documents, information, or evidence.~~

20 ~~(2) For the purposes of investigating violations or complaints~~  
21 ~~arising under this chapter against a licensee or person, the~~  
22 ~~commissioner may direct, subpoena, or order the attendance of~~  
23 ~~and examine under oath all persons whose testimony may be~~  
24 ~~required about the student education loan or account of the student~~  
25 ~~loan borrower.~~

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

1     ~~28114. (a) If it appears to the commissioner that a licensee is~~  
 2 ~~violating or failing to comply with any law of this state, the~~  
 3 ~~commissioner may direct the licensee to comply with the law by~~  
 4 ~~an order issued under the commissioner’s official seal, or if it~~  
 5 ~~appears to the commissioner that any licensee is conducting its~~  
 6 ~~business in an unsafe or injurious manner, the commissioner may,~~  
 7 ~~in like manner, direct it to discontinue the unsafe or injurious~~  
 8 ~~practices. The order shall require the licensee to show cause before~~  
 9 ~~the commissioner, at a time and place to be fixed by the~~  
 10 ~~commissioner, as to why the order should not be observed.~~

11     ~~(b) If, upon any hearing held pursuant to subdivision (a), the~~  
 12 ~~commissioner finds that the licensee is violating or failing to~~  
 13 ~~comply with any law of this state or is conducting its business in~~  
 14 ~~an unsafe or injurious manner, the commissioner may make a final~~  
 15 ~~order directing it to comply with the law or to discontinue the~~  
 16 ~~unsafe or injurious practices. A licensee shall comply with the~~  
 17 ~~final order unless, within 10 days after the issuance of the order,~~  
 18 ~~its enforcement is restrained in a proceeding brought by the~~  
 19 ~~licensee.~~

20     ~~28116. (a) The commissioner may issue an order suspending~~  
 21 ~~or revoking a license, or taking possession of and placing a licensee~~  
 22 ~~in receivership, if after notice and an opportunity for hearing, the~~  
 23 ~~commissioner finds any of the following:~~

24     ~~(1) The licensee is violating this division, a regulation adopted~~  
 25 ~~or an order issued under this division, or a condition of approval~~  
 26 ~~issued under this division.~~

27     ~~(2) The licensee does not cooperate with an examination or~~  
 28 ~~investigation by the commissioner.~~

29     ~~(3) The licensee engages in fraud, intentional misrepresentation,~~  
 30 ~~or gross negligence in servicing a student education loan.~~

31     ~~(4) The competence, experience, character, or general fitness~~  
 32 ~~of the licensee, or any director, officer, employee, or person in~~  
 33 ~~control of a licensee, indicates that it is not in the public interest~~  
 34 ~~to permit the student loan servicer to continue to providing~~  
 35 ~~servicing of student education loans.~~

36     ~~(5) The licensee engages in an unsafe or unsound practice.~~

37     ~~(6) The licensee is insolvent, suspends payment of its~~  
 38 ~~obligations, or makes a general assignment for the benefit of its~~  
 39 ~~creditors.~~

1 ~~(7) Any fact or condition exists that, if it had existed at the time~~  
2 ~~when the licensee applied for its license, would have been grounds~~  
3 ~~for denying the application.~~

4 ~~(b) In determining whether a licensee is engaging in an unsafe~~  
5 ~~or unsound practice, the commissioner may consider the size and~~  
6 ~~condition of the licensee's provision of student education loan~~  
7 ~~servicing, the magnitude of the loss, the gravity of the violation~~  
8 ~~of this division, and the previous conduct of the persons involved.~~

9 ~~28118. The commissioner may assess a civil penalty against~~  
10 ~~a person that violates this division or a regulation adopted or an~~  
11 ~~order issued pursuant to this division in an amount not to exceed~~  
12 ~~one thousand dollars (\$1,000) for each violation or, in the case of~~  
13 ~~a continuing violation, one thousand dollars (\$1,000) for each day~~  
14 ~~or part thereof during which the violation continues, plus this~~  
15 ~~state's costs and expenses for the investigation and prosecution of~~  
16 ~~the matter, including, but not limited to, reasonable attorney's fees.~~

17  
18 *CHAPTER 2. LICENSING*

19  
20 *Article 1. Commissioner of Business Oversight*

21  
22 *28108. (a) The commissioner shall administer the provisions*  
23 *of this division.*

24 *(b) The commissioner may promulgate regulations and issue*  
25 *orders to further the purposes of this division.*

26 *28110. (a) The commissioner shall have the authority to*  
27 *conduct investigations and examinations of an applicant or licensee*  
28 *as follows:*

29 *(1) For purposes of determining whether an applicant is eligible*  
30 *for a license, or that a licensee is complying with the provisions*  
31 *of this division or any regulation or order of the commissioner,*  
32 *the commissioner may access, receive, and use any books,*  
33 *accounts, records, files, documents, information, or evidence,*  
34 *including, but not limited to, any of the following relating to the*  
35 *intent to, or the practice of, servicing student loans for borrowers:*

36 *(A) Criminal, civil, and administrative history information.*

37 *(B) Personal history and experience information, including, but*  
38 *not limited to, independent credit reports obtained from a consumer*  
39 *credit reporting agency.*

1 (C) Any other documents, information, or evidence that the  
2 commissioner deems relevant to the inquiry or investigation  
3 regardless of the location, possession, control, or custody of those  
4 documents, information, or evidence.

5 (2) For the purposes of investigating violations or complaints  
6 arising under this division, the commissioner may direct, subpoena,  
7 or order the attendance of, and examine under oath, any person  
8 whose testimony may be required about the student loan or account  
9 of the borrower.

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

25 (c) The commissioner may charge an applicant or a licensee  
26 the actual costs for conducting an examination pursuant to this  
27 division.

28

29

Article 2. Application for License

30

31 28112. (a) Only a natural person is eligible to be an applicant  
32 and be licensed pursuant to this division.

33 (b) An applicant shall apply for a license by submitting all of  
34 the following to the commissioner:

35 (1) A completed application for a license in a form prescribed  
36 by the commissioner and signed under penalty of perjury.

37 (2) A license fee determined by the commissioner that is  
38 reasonable to pay the department's actual costs to process and  
39 investigate the application.

1 28114. (a) *The commissioner shall submit to the Department*  
2 *of Justice fingerprint images and related information required by*  
3 *the Department of Justice of every applicant for a license pursuant*  
4 *to Section 28112, for purposes of obtaining information as to the*  
5 *existence and content of a record of state or federal convictions,*  
6 *state or federal arrests, and information as to the existence and*  
7 *content of a record of state or federal arrests for which the*  
8 *Department of Justice establishes that the person is free on bail*  
9 *or on his or her own recognizance pending trial or appeal.*

10 (b) *When received, the Department of Justice shall forward to*  
11 *the Federal Bureau of Investigation requests for federal summary*  
12 *criminal history information received pursuant to this section. The*  
13 *Department of Justice shall review the information returned from*  
14 *the Federal Bureau of Investigation and compile and disseminate*  
15 *a response to the commissioner.*

16 (c) *The Department of Justice shall provide a response to the*  
17 *commissioner pursuant to paragraph (1) of subdivision (p) of*  
18 *Section 11105 of the Penal Code.*

19 (d) *The commissioner shall request from the Department of*  
20 *Justice subsequent arrest notification service, as provided pursuant*  
21 *to Section 11105.2 of the Penal Code, for the license applicant*  
22 *described in subdivision (a).*

23 (e) *The Department of Justice shall charge the department a*  
24 *fee sufficient to cover the costs of processing the requests pursuant*  
25 *to this section.*

26 28116. *The commissioner shall, within 60 days from the date*  
27 *an application pursuant to Section 28112 is complete, including*  
28 *having received the information from the Department of Justice*  
29 *pursuant to Section 28114, either grant a license pursuant to this*  
30 *division or provide a written explanation for the denial.*

31 28118. (a) *The proceedings for a denial of a license shall be*  
32 *conducted in accordance with Chapter 5 (commencing with Section*  
33 *11500) of Part 1 of Division 3 of Title 2 of the Government Code.*

34 (b) *The commissioner may deny an application for a license for*  
35 *any of the following reasons:*

36 (1) *The applicant made a false statement of a material fact on*  
37 *the application.*

38 (2) *The applicant or a person with control over the applicant,*  
39 *within the last 10 years of the date of application, has committed*  
40 *any act involving dishonesty, fraud, or deceit, or has been*

1 convicted of, or pleaded *nolo contendere* to, a crime substantially  
2 related to the qualifications, functions, or duties related to  
3 servicing.

4 (3) The applicant or a person with control over the applicant  
5 has violated any provision of this division.

6 28120. (a) The commissioner may deem an application for a  
7 license abandoned if the applicant fails to respond to any request  
8 for information required by the commissioner or department during  
9 an investigation of the application.

10 (b) The commissioner shall notify the applicant, in writing, that  
11 if the applicant fails to submit responsive information no later  
12 than 60 days after the date the commissioner sent the written  
13 request for information, the commissioner shall deem the  
14 application abandoned.

15 (c) An application fee paid prior to the date an application is  
16 deemed abandoned shall not be refunded. Abandonment of an  
17 application pursuant to this subdivision shall not preclude the  
18 applicant from submitting a new application and fee for a license.

19 28122. A license shall remain effective until the license is either  
20 suspended or revoked by the commissioner or surrendered by the  
21 licensee.

22 28124. The commissioner may suspend or revoke a license  
23 issued under this division if the commissioner finds that the licensee  
24 violated any provision of this division or if any fact or condition  
25 exists that, if it had existed at the time of the initial application for  
26 the license, clearly would have warranted a denial of the license.

27 28126. A licensee that ceases to service student loans to  
28 borrowers shall inform the commissioner in writing and surrender  
29 the license and all other indicia of license to the commissioner.  
30 The commissioner may require a licensee to file a plan for the  
31 disposition of the servicing business that includes, but is not limited  
32 to, a closing audit. Upon receipt of the written notice and plan, if  
33 required, the commissioner shall determine whether the licensee  
34 has violated this division. The commissioner shall give a licensee  
35 notice of accepting a surrendered license, and a license shall not  
36 be deemed surrendered until the commissioner accepts its tender  
37 in writing.

CHAPTER 3. LICENSEE DUTIES

1  
2  
3     28128. A licensee shall notify the commissioner, in writing, of  
4 any change in the information provided in the application for a  
5 license, as applicable, not later than 10 business days after the  
6 occurrence of the event that results in the information becoming  
7 inaccurate or incomplete.

8     28130. A licensee shall only provide servicing at the place of  
9 business on the license. A licensee shall obtain prior written  
10 permission from the commissioner to add or change business  
11 locations authorized to operate under the license.

12     28132. A licensee shall do all of the following:

13     (a) Maintain staff adequate to meet the requirements of this  
14 division and every regulation and order of the commissioner.

15     (b) File with the commissioner any report required by regulation  
16 or order of the commissioner.

17     (c) Comply with the provisions of this division and any  
18 regulation or order of the commissioner.

19     (d) Submit to periodic examination by the commissioner as  
20 required by this division and any regulation or order of the  
21 commissioner.

22     (e) Advise the commissioner of filing a petition for bankruptcy  
23 within five days of the filing.

24     (f) Comply with all applicable state and federal laws and tax  
25 return filing requirements.

26     (g) Comply with any other requirement established by regulation  
27 or order of the commissioner.

28     (h) Provide information on a publicly accessible Internet Web  
29 site concerning affordable repayment and loan forgiveness options  
30 that may be available to borrowers and provide to borrowers, at  
31 least once per calendar year, a written correspondence or email  
32 describing those options, as applicable.

33     (i) Appoint a single point of contact for a borrower wanting  
34 any of the following:

35         (1) Ability to enter into an agreement for, resolution on an issue  
36 concerning, or general information about a repayment option that  
37 requires subsequent submission of supporting documentation.

38         (2) Modification of the terms of repayment of the student  
39 education loan because of hardship.

1 (j) *If the sale, assignment, or other transfer of the servicing of*  
2 *a student loan results in a change in the identity of the party to*  
3 *whom the borrower is required to send payments, or direct any*  
4 *communications concerning the student loan to, then the licensee*  
5 *shall notify the borrower in writing at least 45 days before a*  
6 *borrower is required to send a payment on the student loan of all*  
7 *of the following:*

8 (1) *The identity of the new student loan servicer.*

9 (2) *The name and address of the new student loan servicer to*  
10 *whom subsequent payments or communications is required to be*  
11 *sent.*

12 (3) *The telephone numbers and Internet Web sites of the new*  
13 *student loan servicer.*

14 (4) *The effective date of the sale, assignment, or transfer.*

15 (5) *The date on which the current student loan servicer will stop*  
16 *accepting payments on the borrower's student loan.*

17 (6) *The date on which the new student loan servicer will begin*  
18 *accepting payments on the borrower's student loan.*

19 (k) *Respond to a qualified written request by acknowledging*  
20 *receipt of the request within five business days and within 30*  
21 *business days provide, to the extent possible, information relating*  
22 *to the request and the applicable action the licensee will take to*  
23 *correct the account or an explanation for the licensee's position*  
24 *that the borrower's account is correct.*

25 (l) *Unless otherwise directed by the borrower of a student loan,*  
26 *upon receipt of a payment, the licensee shall apply amounts in*  
27 *excess of the minimum payment amount first to the interest and*  
28 *fees owed on the payment due date, next to the principal balance*  
29 *of the student loan balance bearing the highest annual percentage*  
30 *rate, and then to each successive interest and fees and principal*  
31 *balance bearing the next highest annual percentage rate until the*  
32 *payment is exhausted. A borrower may instruct or expressly*  
33 *authorize a licensee to apply excess payments in a different*  
34 *manner. A borrower may also voluntarily increase the periodic*  
35 *payment amount by various means, including, but not limited to,*  
36 *increasing his or her recurring electronic payment with the right*  
37 *to return to the original amortization schedule at any time.*

38 28134. *The licensee shall not do any of the following:*

39 (a) *Directly or indirectly employ any scheme, device, or artifice*  
40 *to defraud or mislead a borrower.*

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

8 (c) Obtain property of a borrower by fraud or misrepresentation.

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

11 (e) Knowingly or recklessly provide inaccurate information to  
12 a credit bureau regarding a borrower.

13 (f) Fail to report both the favorable and unfavorable payment  
14 history of the borrower to a nationally recognized consumer credit  
15 bureau at least annually if the licensee regularly reports  
16 information to a credit bureau.

17 (g) Refuse to communicate with an authorized representative  
18 of the borrower who provides a written authorization signed by  
19 the borrower, provided the licensee may adopt procedures  
20 reasonably related to verifying that the representative is in fact  
21 authorized to act on behalf of the borrower.

22 (h) Negligently or intentionally make any false statement or  
23 knowingly and willfully make any omission of a material fact in  
24 connection with any information or reports filed with the  
25 commissioner, the department, or another governmental agency.

26 28136. The licensee shall retain and maintain its records of  
27 servicing a borrower's student loan for a minimum of three years  
28 after the student loan has been transferred, assigned, or paid in  
29 full.

30  
31 CHAPTER 4. ENFORCEMENT  
32

33 28138. (a) If the commissioner has a reasonable basis to  
34 believe that a licensee is violating or failing to comply with any  
35 law of this state, including, but not limited to, this division or any  
36 regulation or order of the commissioner, or servicing student loans  
37 in an unsafe or injurious manner, then the commissioner may  
38 direct the licensee to comply with the law by an order issued by  
39 the commissioner. The order shall require the licensee to show

1 cause before the commissioner, at a time and place to be fixed by  
2 the commissioner, as to why the order should not be observed.

3 (b) If, upon any hearing held pursuant to this section, the  
4 commissioner finds that the licensee is violating or failing to  
5 comply with any law of this state or servicing student loans in an  
6 unsafe or injurious manner, the commissioner may make a final  
7 order directing the licensee to comply with the law or discontinue  
8 the unsafe or injurious practices. A licensee shall comply with the  
9 final order unless, within 10 days after the issuance of the order,  
10 its enforcement is restrained in a proceeding brought by the  
11 licensee.

12 28140. (a) The commissioner may issue an order suspending  
13 or revoking a license if, after notice and an opportunity for hearing,  
14 the commissioner finds any of the following:

15 (1) The licensee is violating this division or a regulation adopted  
16 or an order issued under this division.

17 (2) The licensee does not cooperate with an examination or  
18 investigation by the commissioner.

19 (3) The licensee engages in fraud, intentional misrepresentation,  
20 or gross negligence in servicing a student loan.

21 (4) The competence, experience, character, or general fitness  
22 of the licensee, or any director, officer, employee, or person in  
23 control of a licensee, indicates that it is not in the public interest  
24 to permit the licensee to continue servicing student loans.

25 (5) The licensee engages in an unsafe or unsound practice.

26 (6) The licensee is insolvent, suspends payment of its obligations,  
27 or makes a general assignment for the benefit of its creditors.

28 (7) Any fact or condition exists that, if it had existed at the time  
29 the licensee applied for the license, would have been grounds for  
30 denying the application.

31 (b) In determining whether a licensee is engaging in an unsafe  
32 or unsound practice, the commissioner may consider the size and  
33 condition of the licensee's provision of servicing, the magnitude  
34 of the loss, the gravity of the violation of this division, and the  
35 previous conduct of the persons involved.

36 28142. The commissioner may assess a civil penalty against  
37 a person that violates this division, or a regulation promulgated  
38 or order issued by the commissioner pursuant to this division, in  
39 an amount not to exceed one thousand dollars (\$1,000) for each  
40 violation or, in the case of a continuing violation, one thousand

1 dollars (\$1,000) for each day or part thereof during which the  
2 violation continues, plus the department’s actual costs and  
3 expenses for the investigation and prosecution of the matter,  
4 including, but not limited to, reasonable attorney’s fees.

5

6

CHAPTER 5. MISCELLANEOUS

7

8 28144. If any provision of this division or the application  
9 thereof to any person or circumstances is held invalid, illegal, or  
10 unenforceable, such invalidity, illegality, or unenforceability shall  
11 not affect other provisions or applications of this division which  
12 can be given effect without the invalid, illegal, or unenforceable  
13 provision or application, and, to this end, the provisions of this  
14 division are declared to be severable.

15 28146. The rights and remedies provided in this division are  
16 in addition to any other rights and remedies provided by law.

17 SEC. 3. No reimbursement is required by this act pursuant to  
18 Section 6 of Article XIII B of the California Constitution because  
19 the only costs that may be incurred by a local agency or school  
20 district will be incurred because this act creates a new crime or  
21 infraction, eliminates a crime or infraction, or changes the penalty  
22 for a crime or infraction, within the meaning of Section 17556 of  
23 the Government Code, or changes the definition of a crime within  
24 the meaning of Section 6 of Article XIII B of the California  
25 Constitution.