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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 3820

04/06/2016 Authored by Murphy, E.; Kahn and Dehn, R.,
The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act
1.2 relating to commerce; establishing a student loan ombudsperson; requiring the
1.3 licensure of student loan servicers; prohibiting certain practices in student loan
1.4 servicing; proposing coding for new law as Minnesota Statutes, chapter 58B.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **[58B.01] DEFINITIONS.**

1.7 Subdivision 1. **Scope.** For the purposes of this chapter, the following terms have
1.8 the meanings given them.

1.9 Subd. 2. **Borrower.** "Borrower" means a resident of this state who has received or
1.10 agreed to pay a student loan, whether the duty to pay is direct or contingent.

1.11 Subd. 3. **Commissioner.** "Commissioner" means the commissioner of commerce.

1.12 Subd. 4. **Financial institution.** "Financial institution" means a bank, bank and
1.13 trust, trust company with banking powers, savings bank, savings association, or credit
1.14 union, organized under the laws of this state, any other state, or the United States; an
1.15 industrial loan and thrift under chapter 53; or a regulated lender under chapter 56. The
1.16 term financial institution also includes a subsidiary or operating subsidiary of a financial
1.17 institution or of a bank holding company as defined in United States Code, title 12, section
1.18 1841 et seq., if the subsidiary or operating subsidiary can demonstrate to the satisfaction
1.19 of the commissioner that it is regulated and subject to active and ongoing oversight and
1.20 supervision by a federal banking agency, as defined in United States Code, title 12, section
1.21 1811 et seq., or the commissioner.

1.22 Subd. 5. **Person in control.** "Person in control" means any member of senior
1.23 management, including owners or officers, and other persons who possess, directly or
1.24 indirectly, the power to direct or cause the direction of the management policies of an

2.1 applicant or student loan servicer under this chapter, regardless of whether the person has
 2.2 any ownership interest in the applicant or student loan servicer. Control is presumed to
 2.3 exist if a person, directly or indirectly, owns, controls, or holds with power to vote ten
 2.4 percent or more of the voting stock of an applicant or student loan servicer or of a person
 2.5 who owns, controls, or holds with power to vote ten percent or more of the voting stock
 2.6 of an applicant or student loan servicer.

2.7 Subd. 6. **Servicing.** "Servicing" means:

2.8 (1) receiving any scheduled periodic payments from a borrower pursuant to the
 2.9 terms of a student loan;

2.10 (2) applying the payments of principal, interest, and other payments with respect
 2.11 to the amounts received from a borrower, as may be required pursuant to the terms of
 2.12 a student loan; and

2.13 (3) performing other administrative services with respect to a student loan.

2.14 Subd. 7. **Student loan.** "Student loan" means a government, commercial, or
 2.15 foundation loan for actual costs paid for tuition and reasonable education and living
 2.16 expenses.

2.17 Subd. 8. **Student loan servicer.** "Student loan servicer" means any person,
 2.18 wherever located, responsible for the servicing of any student loan to any borrower,
 2.19 including a nonbank covered person, as defined in Code of Federal Regulations, title 12,
 2.20 section 1090.101, who is responsible for the servicing of any student loan to any borrower.

2.21 Sec. 2. **[58B.02] STUDENT LOAN OMBUDSPERSON.**

2.22 Subdivision 1. **Designation of a student loan ombudsperson.** The commissioner
 2.23 must designate a student loan ombudsperson within the Department of Commerce to
 2.24 provide timely assistance to any borrower.

2.25 Subd. 2. **Duties.** The student loan ombudsperson must:

2.26 (1) receive, review, and attempt to resolve complaints from borrowers, including
 2.27 but not limited to attempts to resolve such complaints in collaboration with institutions of
 2.28 higher education, student loan servicers, and any other participants in student loan lending;

2.29 (2) compile and analyze data on borrower complaints received under clause (1);

2.30 (3) help borrowers to understand their rights and responsibilities under the terms of
 2.31 student loans;

2.32 (4) provide information to the public, state agencies, legislators, and relevant
 2.33 stakeholders regarding the problems and concerns of borrowers;

2.34 (5) make recommendations for resolving the problems of borrowers;

3.1 (6) analyze and monitor the development and implementation of federal, state, and
 3.2 local laws, regulations, and policies relating to borrowers and recommend any changes
 3.3 deemed necessary;

3.4 (7) review the complete student education loan history for any borrower who has
 3.5 provided written consent for such review;

3.6 (8) increase public awareness that the ombudsperson is available to assist in the
 3.7 resolution of the student loan servicing concerns of potential and actual borrowers,
 3.8 institutions of higher education, student loan servicers, and any other participant in
 3.9 student lending; and

3.10 (9) take other actions, as necessary, to fulfill the duties of the ombudsperson set
 3.11 forth in this section.

3.12 Subd. 3. **Student loan education course.** The ombudsperson must establish and
 3.13 maintain a borrower education course. The course shall include educational presentations
 3.14 and materials regarding important topics in student loans, including but not limited to:

3.15 (1) the meaning of important terminology used in student lending;

3.16 (2) documentation requirements;

3.17 (3) monthly payment obligations;

3.18 (4) income-based repayment options;

3.19 (5) the availability of state and federal loan forgiveness programs; and

3.20 (6) disclosure requirements.

3.21 Subd. 4. **Reporting.** By January 15 of each odd-numbered year, the ombudsperson
 3.22 must report to the committees of the legislature responsible for commerce and higher
 3.23 education. The report must describe the ombudsperson's implementation of this
 3.24 section, the outcomes achieved by the ombudsperson in the previous two years, and
 3.25 recommendations for improving the regulation of student loan servicers.

3.26 Sec. 3. **[58B.03] LICENSING OF STUDENT LOAN SERVICERS.**

3.27 Subdivision 1. **License required.** No person shall directly or indirectly act as a
 3.28 student loan servicer without first obtaining a license from the commissioner.

3.29 Subd. 2. **Exempt persons.** The following persons are exempt from the licensure
 3.30 requirements under this section:

3.31 (1) a financial institution;

3.32 (2) a person servicing student loans made with the person's own funds, if no more
 3.33 than three such student loans are made in any 12-month period;

3.34 (3) an agency of the federal government, or of a state or municipal government;

4.1 (4) a person acting in a fiduciary capacity, such as a trustee or receiver, as a result of
4.2 a specific order issued by a court of competent jurisdiction; or

4.3 (5) a person exempted by order of the commissioner.

4.4 Subd. 3. **Application for licensure.** (a) Any person seeking to act within the state
4.5 as a student loan servicer must apply for a license in a form and manner specified by the
4.6 commissioner. At a minimum, the application must include:

4.7 (1) a financial statement prepared by a certified public accountant or a public
4.8 accountant;

4.9 (2) the history of criminal convictions, excluding traffic violations, for persons in
4.10 control of the applicant;

4.11 (3) any information requested by the commissioner related to the history of criminal
4.12 convictions disclosed under clause (2);

4.13 (4) a nonrefundable license fee of \$1,000; and

4.14 (5) a nonrefundable investigation fee of \$800.

4.15 (b) The commissioner may conduct a state and national criminal history records
4.16 check of the applicant and of each person in control or employee of the applicant.

4.17 Subd. 4. **Issuance of a license.** Upon receipt of a complete application for an initial
4.18 license and the payment of fees for license and investigation, the commissioner must
4.19 investigate the financial condition and responsibility, character, financial and business
4.20 experience, and general fitness of the applicant. The commissioner may issue a license if
4.21 the commissioner finds that:

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

4.23 (2) the applicant's business will be conducted honestly, fairly, equitably, carefully,
4.24 and efficiently within the purposes and intent of this section;

4.25 (3) each person in control of the applicant is in all respects properly qualified and
4.26 of good character;

4.27 (4) no person, on behalf of the applicant, has knowingly made any incorrect
4.28 statement of a material fact in the application, or in any report or statement made pursuant
4.29 to this section;

4.30 (5) no person, on behalf of the applicant, has knowingly omitted from an application,
4.31 report, or statement made pursuant to this section, any information required by the
4.32 commissioner;

4.33 (6) the applicant has paid the fees required under this section; and

4.34 (7) the application has met other similar requirements, as determined by the
4.35 commissioner.

5.1 Subd. 5. **Notification of a change in status.** An applicant or student loan servicer
5.2 must notify the commissioner in writing of any change in the information provided in its
5.3 initial application for a license or its most recent renewal application for such a license.
5.4 This notification must be received no later than ten business days after an event that results
5.5 in the information becoming inaccurate.

5.6 Subd. 6. **Term of license.** Licenses issued under this chapter expire on December
5.7 31 and are renewable on January 1 of each year after that date.

5.8 Sec. 4. **[58B.04] LICENSING MULTIPLE PLACES OF BUSINESS.**

5.9 (a) A person licensed to act within the state as a student loan servicer may not do so
5.10 under any other name or at any other place of business than that named in the license. Any
5.11 time a student loan servicer changes the location of the servicer's place of business, the
5.12 servicer must provide prior written notice to the commissioner. A student loan servicer may
5.13 not maintain more than one place of business under the same license. The commissioner
5.14 may issue more than one license to the same student loan servicer, provided that the
5.15 servicer complies with the application procedures in section 58B.03 for each license.

5.16 (b) A license issued under this chapter is not transferable or assignable.

5.17 Sec. 5. **[58B.05] LICENSE RENEWAL.**

5.18 Subdivision 1. **Term.** Licenses are renewable on January 1 of each year.

5.19 Subd. 2. **Timely renewal.** (a) A person whose application is properly and timely filed
5.20 who has not received notice of denial of renewal is considered approved for renewal and
5.21 the person may continue to act as a student loan servicer whether or not the renewed license
5.22 has been received on or before January 1 of the renewal year. Application for renewal of a
5.23 license is considered timely filed if received by the commissioner, or mailed with proper
5.24 postage and postmarked, by December 15 of the renewal year. An application for renewal
5.25 is considered properly filed if made upon forms duly executed, accompanied by fees
5.26 prescribed by this chapter, and containing any information that the commissioner requires.

5.27 (b) A person who fails to make a timely application for renewal of a license and who
5.28 has not received the renewal license as of January 1 of the renewal year is unlicensed until
5.29 the renewal license has been issued by the commissioner and is received by the person.

5.30 Subd. 3. **Contents of renewal application.** Application for the renewal of an
5.31 existing license must contain the information specified in section 58B.03, subdivision
5.32 3, however, only the requested information having changed from the most recent prior
5.33 application need be submitted.

6.1 Subd. 4. **Cancellation.** A student loan servicer ceasing an activity or activities
6.2 regulated by this chapter and desiring to no longer be licensed shall inform the
6.3 commissioner in writing and, at the same time, surrender the license and all other symbols
6.4 or indicia of licensure. The licensee shall include a plan for the withdrawal from student
6.5 loan servicing, including a timetable for the disposition of the student loans being serviced.

6.6 Subd. 5. **Renewal fees.** The following fees must be paid to the commissioner for
6.7 a renewal license:

- 6.8 (1) a nonrefundable renewal license fee of \$500; and
6.9 (2) a nonrefundable renewal investigation fee of \$400.

6.10 **Sec. 6. [58B.06] PROHIBITED CONDUCT.**

6.11 Subdivision 1. **Misleading borrowers.** A student loan servicer must not directly or
6.12 indirectly attempt to mislead a borrower.

6.13 Subd. 2. **Misrepresentation.** A student loan servicer must not engage in any unfair
6.14 or deceptive practice or misrepresent or omit any material information in connection with
6.15 the servicing of a student loan, including but not limited to misrepresenting the amount,
6.16 nature, or terms of any fee or payment due or claimed to be due on a student loan, the
6.17 terms and conditions of the loan agreement, or the borrower's obligations under the loan.

6.18 Subd. 3. **Misapplication of payments.** A student loan servicer must not knowingly
6.19 or negligently misapply student loan payments.

6.20 Subd. 4. **Inaccurate information.** A student loan servicer must not knowingly or
6.21 negligently provide inaccurate information to any consumer reporting agency, as defined
6.22 in section 13C.011, subdivision 4.

6.23 Subd. 5. **Reporting of payment history.** A student loan servicer must not fail to
6.24 report both the favorable and unfavorable payment history of the borrower to a consumer
6.25 reporting agency at least annually, if the student loan servicer regularly reports such
6.26 information.

6.27 Subd. 6. **Refusal to communicate with a borrower's representative.** A student
6.28 loan servicer must not refuse to communicate with a representative of the borrower who
6.29 provides a written authorization signed by the borrower, provided the student loan servicer
6.30 may adopt procedures reasonably related to verifying that the representative is in fact
6.31 authorized to act on behalf of the borrower.

6.32 Subd. 7. **False statements and omissions.** A student loan servicer must not
6.33 knowingly or negligently make any false statement or omission of material fact in
6.34 connection with any application, information, or reports filed with the commissioner or
6.35 any other federal, state, or local government agency.

7.1 Subd. 8. **Noncompliance with applicable laws.** A student loan servicer must
7.2 not violate any other federal, state, or local laws, including those related to fraudulent,
7.3 coercive, or dishonest practices.

7.4 Sec. 7. **[58B.07] EXAMINATIONS.**

7.5 The commissioner has under this chapter the same powers with respect to
7.6 examinations that the commissioner has under section 46.04.

7.7 Sec. 8. **[58B.08] DENIAL, SUSPENSION, REVOCATION OF LICENSES.**

7.8 Subdivision 1. **Powers of commissioner.** (a) The commissioner may by order
7.9 take any or all of the following actions:

7.10 (1) bar a person from engaging in student loan servicing;

7.11 (2) deny, suspend, or revoke a student loan servicer license;

7.12 (3) censure a student loan servicer;

7.13 (4) impose a civil penalty as provided for in section 45.027, subdivision 6; or

7.14 (5) revoke an exemption.

7.15 (b) In order to take the action in paragraph (a), the commissioner must find:

7.16 (1) that the order is in the public interest; and

7.17 (2) that the student loan servicer, applicant, person in control, employee, or agent has:

7.18 (i) violated any provision of this chapter or rule or order under this chapter;

7.19 (ii) violated a standard of conduct or engaged in a fraudulent, coercive, deceptive,
7.20 or dishonest act or practice, whether or not the act or practice involves student loan

7.21 servicing including but not limited to negligently making a false statement or knowingly
7.22 omitting a material fact;

7.23 (iii) engaged in an act or practice, whether or not the act or practice involves the

7.24 student loan servicing, that demonstrates untrustworthiness, financial irresponsibility, or
7.25 incompetence;

7.26 (iv) pled guilty or nolo contendere, or been convicted of a felony, gross misdemeanor,
7.27 or a misdemeanor;

7.28 (v) paid a civil penalty or been the subject of disciplinary action by the commissioner,
7.29 an order of suspension or revocation, cease and desist order, injunction order, or order
7.30 barring involvement in an industry or profession issued by the commissioner or any other
7.31 federal, state, or local government agency;

7.32 (vi) been found by a court of competent jurisdiction to have engaged in conduct
7.33 evidencing gross negligence, fraud, misrepresentation, or deceit;

7.34 (vii) refused to cooperate with an investigation or examination by the commissioner;

8.1 (viii) failed to pay any fee or assessment imposed by the commissioner; or
8.2 (ix) failed to comply with state and federal tax obligations.

8.3 Subd. 2. **Orders of the commissioner.** To begin a proceeding under this section,
8.4 the commissioner shall issue an order requiring the subject of the proceeding to show
8.5 cause why action should not be taken against the person according to this section. The
8.6 order must be calculated to give reasonable notice of the time and place for the hearing
8.7 and must state the reasons for entry of the order. The commissioner may by order
8.8 summarily suspend a license or exemption or summarily bar a person from engaging in
8.9 student loan servicing pending a final determination of an order to show cause. If a license
8.10 or exemption is summarily suspended or if the person is summarily barred from any
8.11 involvement in the servicing of student loans, pending final determination of an order to
8.12 show cause, a hearing on the merits must be held within 30 days of the issuance of the
8.13 order of summary suspension or bar. All hearings must be conducted under chapter 14.
8.14 After the hearing, the commissioner shall enter an order disposing of the matter as the
8.15 facts require. If the subject of the order fails to appear at a hearing after having been duly
8.16 notified, the person is considered in default, and the proceeding may be determined against
8.17 the subject of the order upon consideration of the order to show cause, the allegations of
8.18 which may be considered to be true.

8.19 Subd. 3. **Actions against lapsed license.** If a license or certificate of exemption
8.20 lapses, is surrendered, withdrawn, terminated, or otherwise becomes ineffective, the
8.21 commissioner may institute a proceeding under this subdivision within two years after the
8.22 license or certificate of exemption was last effective and enter a revocation or suspension
8.23 order as of the last date on which the license or certificate of exemption was in effect, and
8.24 may impose a civil penalty as provided for in this section or section 45.027, subdivision 6.