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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. **1424**

- 02/21/2019 Authored by Stephenson, Bernardy, Halverson, Huot, Klevorn and others
The bill was read for the first time and referred to the Committee on Commerce
- 03/13/2019 Adoption of Report: Amended and re-referred to the Committee on Ways and Means
- 02/27/2020 Adoption of Report: Amended and re-referred to the Judiciary Finance and Civil Law Division without further recommendation
- 03/11/2020 Adoption of Report: Amended and re-referred to the State Government Finance Division

1.1 A bill for an act

1.2 relating to commerce; establishing a student loan advocate; requiring licensure of

1.3 student loan servicers; prohibiting certain practices in student loan servicing;

1.4 requiring a report; appropriating money; amending Minnesota Statutes 2018,

1.5 section 13.712, by adding a subdivision; proposing coding for new law as Minnesota

1.6 Statutes, chapter 58B.

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

1.8 Section 1. Minnesota Statutes 2018, section 13.712, is amended by adding a subdivision

1.9 to read:

1.10 Subd. 7. **Student loan servicers.** Data collected, created, received, maintained, or

1.11 disseminated under chapter 58B are governed by section 58B.11.

1.12 Sec. 2. **[58B.01] DEFINITIONS.**

1.13 Subdivision 1. **Scope.** For the purposes of this chapter, the following terms have the

1.14 meanings given them.

1.15 Subd. 2. **Borrower.** "Borrower" means a resident of this state who has received or agreed

1.16 to pay a student loan or a person who shares responsibility with a resident for repaying a

1.17 student loan.

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

1.19 Subd. 4. **Financial institution.** "Financial institution" means any of the following

1.20 organized under the laws of this state, any other state, or the United States: a bank, bank

1.21 and trust, trust company with banking powers, savings bank, savings association, or credit

1.22 union.

2.1 Subd. 5. **Person in control.** "Person in control" means any member of senior
2.2 management, including owners or officers, and other persons who possess, directly or
2.3 indirectly, the power to direct or cause the direction of the management policies of an
2.4 applicant or student loan servicer under this chapter, regardless of whether the person has
2.5 any ownership interest in the applicant or student loan servicer. Control is presumed to exist
2.6 if a person, directly or indirectly, owns, controls, or holds with power to vote ten percent
2.7 or more of the voting stock of an applicant or student loan servicer or of a person who owns,
2.8 controls, or holds with power to vote ten percent or more of the voting stock of an applicant
2.9 or student loan servicer.

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

2.11 (1) receiving any scheduled periodic payments from a borrower or notification of
2.12 payments, and applying payments to the borrower's account pursuant to the terms of the
2.13 student loan or of the contract governing servicing;

2.14 (2) during a period when no payment is required on a student loan, maintaining account
2.15 records for the loan and communicating with the borrower regarding the loan, on behalf of
2.16 the loan's holder; and

2.17 (3) interacting with a borrower, including activities to help prevent default on obligations
2.18 arising from student loans, conducted to facilitate the requirements in clauses (1) and (2).

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

2.21 Subd. 8. **Student loan servicer.** "Student loan servicer" means any person, wherever
2.22 located, responsible for the servicing of any student loan to any borrower, including a
2.23 nonbank covered person, as defined in Code of Federal Regulations, title 12, section
2.24 1090.101, who is responsible for the servicing of any student loan to any borrower.

2.25 Sec. 3. **[58B.02] STUDENT LOAN ADVOCATE.**

2.26 Subdivision 1. **Designation of a student loan advocate.** The attorney general shall
2.27 designate a student loan advocate within the Office of the Attorney General to provide
2.28 timely assistance to borrowers and to effectuate this chapter.

2.29 Subd. 2. **Duties.** The student loan advocate shall have the following duties:

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

- 3.1 (2) compile and analyze data on borrower complaints received under clause (1);
- 3.2 (3) help borrowers understand their rights and responsibilities under the terms of student
- 3.3 loans;
- 3.4 (4) provide information to the public, state agencies, legislators, and relevant stakeholders
- 3.5 regarding the problems and concerns of borrowers;
- 3.6 (5) make recommendations for resolving the problems of borrowers;
- 3.7 (6) analyze and monitor the development and implementation of federal, state, and local
- 3.8 laws, regulations, and policies relating to borrowers and recommend any changes deemed
- 3.9 necessary;
- 3.10 (7) review the complete student loan history for any borrower who has provided written
- 3.11 consent for such review;
- 3.12 (8) increase public awareness that the advocate is available to assist in the resolution of
- 3.13 the student loan servicing concerns of potential and actual borrowers, institutions of higher
- 3.14 education, student loan servicers, and any other participant in student lending; and
- 3.15 (9) take other actions, as necessary, to fulfill the duties of the advocate set forth in this
- 3.16 section.

3.17 Subd. 3. **Student loan education course.** The advocate must establish and maintain a

3.18 borrower education course. The course shall include educational presentations and materials

3.19 regarding important topics in student loans, including but not limited to:

- 3.20 (1) the meaning of important terminology used in student lending;
- 3.21 (2) documentation requirements;
- 3.22 (3) monthly payment obligations;
- 3.23 (4) income-based repayment options;
- 3.24 (5) the availability of state and federal loan forgiveness programs; and
- 3.25 (6) disclosure requirements.

3.26 Subd. 4. **Reporting.** By January 15 of each odd-numbered year, the advocate must report

3.27 to the legislative committees with jurisdiction over commerce and higher education. The

3.28 report must describe the advocate's implementation of this section, the outcomes achieved

3.29 by the advocate in the previous two years, and recommendations for improving the regulation

3.30 of student loan servicers.

4.1 Sec. 4. **[58B.03] LICENSING OF STUDENT LOAN SERVICERS.**

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

4.4 **Subd. 2. Exempt persons.** The following persons are exempt from the requirements of
4.5 this chapter:

4.6 (1) a financial institution;

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

4.9 (3) an agency, instrumentality, or political subdivision of this state that makes, services,
4.10 or guarantees student loans;

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

4.13 (5) the University of Minnesota; or

4.14 (6) a person exempted by order of the commissioner.

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

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

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

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

4.23 (4) a nonrefundable license fee established by the commissioner; and

4.24 (5) a nonrefundable investigation fee established by the commissioner.

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

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

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

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

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

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

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

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

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

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

5.19 Subd. 6. **Term of license.** Licenses issued under this chapter expire on December 31
5.20 and are renewable on January 1.

5.21 Subd. 7. **Exemption from application.** (a) A person is exempt from the application
5.22 procedures under subdivision 3 if the commissioner determines that the person is servicing
5.23 student loans in this state pursuant to a contract awarded by the United States Secretary of
5.24 Education under United States Code, title 20, section 1087f. Documentation of eligibility
5.25 for this exemption shall be in a form and manner determined by the commissioner.

5.26 (b) A person determined to be eligible for the exemption under paragraph (a) shall, upon
5.27 payment of the fees under subdivision 3, be issued a license and deemed to meet all of the
5.28 requirements of subdivision 4.

5.29 Subd. 8. **Notice.** (a) A person issued a license under subdivision 7 must provide the
5.30 commissioner with written notice no less than seven days after the person's contract under
5.31 United States Code, title 20, section 1087f, expires, is revoked, or is terminated.

6.1 (b) A person issued a license under subdivision 7 has 30 days from the date the
6.2 notification under paragraph (a) is provided to complete the requirements of subdivision 3.
6.3 If a person does not meet the requirements of subdivision 3 within this time period, the
6.4 commissioner shall immediately suspend the person's license under this chapter.

6.5 Sec. 5. **[58B.04] LICENSING MULTIPLE PLACES OF BUSINESS.**

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

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

6.14 Sec. 6. **[58B.05] LICENSE RENEWAL.**

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

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

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

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

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

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

7.8 (1) a nonrefundable renewal license fee established by the commissioner; and

7.9 (2) a nonrefundable renewal investigation fee established by the commissioner.

7.10 **Sec. 7. [58B.06] DUTIES OF STUDENT LOAN SERVICERS.**

7.11 Subdivision 1. **Response requirements.** Upon receiving a written communication from
7.12 a borrower, a student loan servicer must:

7.13 (1) acknowledge receipt of the communication in less than ten days; and

7.14 (2) provide information relating to the communication and, if applicable, the action the
7.15 student loan servicer will take to either (i) correct the borrower's issue or (ii) explain why
7.16 the issue cannot be corrected. This information must be provided less than 30 days from
7.17 the date the written communication was received by the student loan servicer.

7.18 Subd. 2. **Overpayments.** A student loan servicer must ask a borrower in what manner
7.19 the borrower would like any overpayment, meaning a payment on a student loan that exceeds
7.20 the monthly amount due, to be applied to a student loan. A borrower's instruction regarding
7.21 the application of overpayments is effective for the term of the loan, or until the borrower
7.22 provides a different instruction.

7.23 Subd. 3. **Partial payments.** A student loan servicer must apply a partial payment,
7.24 meaning a payment that is less than the amount due on a student loan, in a manner intended
7.25 to minimize late fees and the negative impact on the borrower's credit history. If a borrower
7.26 has multiple student loans with the same student loan servicer, upon receipt of a partial
7.27 payment the servicer must apply the payments to satisfy as many individual loan payments
7.28 as possible.

7.29 Subd. 4. **Transfer of student loan.** (a) If a borrower's student loan servicer changes
7.30 pursuant to the sale, assignment, or transfer of the servicing, the original student loan servicer
7.31 must:

8.1 (1) require the new student loan servicer to honor all benefits that were made available,
8.2 or which may have become available, to a borrower from the original student loan servicer;
8.3 and

8.4 (2) transfer to the new student loan servicer all information regarding the borrower, the
8.5 account of the borrower, and the borrower's student loan, including, but not limited to, the
8.6 repayment status of the student loan and the benefits described in clause (1).

8.7 (b) The student loan servicer must complete the transfer under clause (2) less than 45
8.8 days from the date the of the sale, assignment, or transfer of the servicing.

8.9 (c) A sale, assignment, or transfer of the servicing must be completed no less than seven
8.10 days from the date the next payment is due on the student loan.

8.11 (d) A new student loan servicer must adopt policies and procedures to verify that the
8.12 original student loan servicer has met the requirements of paragraph (a).

8.13 Subd. 5. **Income-driven repayment.** A student loan servicer must evaluate a borrower
8.14 for eligibility for an income-driven repayment program before placing a borrower in
8.15 forbearance or default.

8.16 Subd. 6. **Records.** A student loan servicer must maintain adequate records of each student
8.17 loan for not less than two years following the final payment on the student loan or the sale,
8.18 assignment, or transfer of the servicing.

8.19 **EFFECTIVE DATE.** This section is effective July 1, 2020, and applies to student loan
8.20 contracts executed on or after that date.

8.21 Sec. 8. **[58B.07] PROHIBITED CONDUCT.**

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

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

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

8.31 Subd. 4. **Inaccurate information.** A student loan servicer must not knowingly or
8.32 negligently provide inaccurate information to any consumer reporting agency.

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

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

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

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

9.16 Subd. 9. **Failure to respond to advocate.** (a) A student loan servicer must respond in
9.17 less than 15 days from receipt of a communication from the student loan advocate. This
9.18 response period may be reasonably shortened by the advocate in their communication.

9.19 (b) A student loan servicer must provide a response in less than 15 days from receipt of
9.20 a consumer complaint submitted to the servicer by the student loan advocate. A student
9.21 loan servicer may request from the advocate an extension of up to 45 days from receipt of
9.22 the consumer complaint, if accompanied by an explanation of why additional time is
9.23 reasonable and necessary.

9.24 Subd. 10. **Incorrect information regarding student loan forgiveness.** A student loan
9.25 servicer must not misrepresent the availability of student loan forgiveness for which the
9.26 servicer has reason to know the borrower is eligible. This includes but is not limited to
9.27 student loan forgiveness programs specific to military borrowers, borrowers working in
9.28 public service, or borrowers with disabilities.

9.29 Subd. 11. **Compliance with servicer duties.** A student loan servicer must comply with
9.30 its duties and obligations under section 58B.06.

9.31 Sec. 9. **[58B.08] EXAMINATIONS.**

9.32 The commissioner has under this chapter the same powers with respect to examinations
9.33 of student loan servicers that the commissioner has under section 46.04.

10.1 Sec. 10. [58B.09] DENIAL, SUSPENSION, REVOCATION OF LICENSES.

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

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

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

10.6 (3) censure a student loan servicer;

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

10.8 (5) revoke an exemption.

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

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

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

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

10.13 (ii) violated a standard of conduct or engaged in a fraudulent, coercive, deceptive, or
10.14 dishonest act or practice, whether or not the act or practice involves student loan servicing,
10.15 including but not limited to negligently making a false statement or knowingly omitting a
10.16 material fact;

10.17 (iii) engaged in an act or practice, whether or not the act or practice involves student
10.18 loan servicing, that demonstrates untrustworthiness, financial irresponsibility, or
10.19 incompetence;

10.20 (iv) pled guilty or nolo contendere to or been convicted of a felony, gross misdemeanor,
10.21 or misdemeanor;

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

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

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

10.29 (viii) failed to pay any fee or assessment imposed by the commissioner; or

10.30 (ix) failed to comply with state and federal tax obligations.

11.1 Subd. 2. **Orders of the commissioner.** To begin a proceeding under this section, the
11.2 commissioner shall issue an order requiring the subject of the proceeding to show cause
11.3 why action should not be taken against the person according to this section. The order must
11.4 be calculated to give reasonable notice of the time and place for the hearing and must state
11.5 the reasons for entry of the order. The commissioner may by order summarily suspend a
11.6 license or exemption or summarily bar a person from engaging in student loan servicing
11.7 pending a final determination of an order to show cause. If a license or exemption is
11.8 summarily suspended or if the person is summarily barred from any involvement in the
11.9 servicing of student loans, pending final determination of an order to show cause, a hearing
11.10 on the merits must be held within 30 days of the issuance of the order of summary suspension
11.11 or bar. All hearings must be conducted under chapter 14. After the hearing, the commissioner
11.12 shall enter an order disposing of the matter as the facts require. If the subject of the order
11.13 fails to appear at a hearing after having been duly notified, the person is considered in
11.14 default, and the proceeding may be determined against the subject of the order upon
11.15 consideration of the order to show cause, the allegations of which may be considered to be
11.16 true.

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

11.23 Sec. 11. **[58B.10] ATTORNEY GENERAL ENFORCEMENT.**

11.24 In addition to the penalties provided in section 58B.09, a student loan servicer who is
11.25 found to have violated section 58B.07, subdivisions 1 to 4 and 7, shall be deemed in violation
11.26 of section 325F.69, subdivision 1, and the provisions of section 8.31 shall apply.

11.27 Sec. 12. **[58B.11] DATA PRACTICES.**

11.28 Subdivision 1. **Classification of data.** (a) Data collected, created, received, maintained,
11.29 or disseminated by the Office of the Attorney General under this chapter are governed by
11.30 section 13.65.

11.31 (b) Data collected, created, received, maintained, or disseminated by the Department of
11.32 Commerce under this chapter are governed by section 46.07.

12.1 Subd. 2. **Data sharing.** To the extent data collected, created, received, maintained, or
12.2 disseminated under this chapter are not public data as defined by section 13.02, subdivision
12.3 8a, such data may, when necessary to accomplish the purpose of this chapter, be shared
12.4 between:

12.5 (1) the United States Department of Education;

12.6 (2) the Office of Higher Education;

12.7 (3) the Department of Commerce;

12.8 (4) the Office of the Attorney General; and

12.9 (5) any other local, state, and federal law enforcement agencies.

12.10 **Sec. 13. APPROPRIATION.**

12.11 (a) \$249,000 in fiscal year 2021 is appropriated from the general fund to the commissioner
12.12 of commerce to administer the requirements of Minnesota Statutes, chapter 58B.

12.13 (b) \$328,000 in fiscal year 2021 is appropriated from the general fund to the attorney
12.14 general to administer the requirements of Minnesota Statutes, chapter 58B.

12.15 **Sec. 14. EFFECTIVE DATE.**

12.16 Sections 1 to 6 and 8 to 13 are effective July 1, 2020.