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**REPORTS:** No

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**NEWSPAPER ARTICLES:** Yes

"New law ramps up oversight for student loan companies," NJBIZ, July 30, 2019

"New Jersey enacts 2 student loan transparency laws - New Jersey enacts 2 student loan transparency Laws,"  
The Press of Atlantic City, July 31, 2019

"New Jersey enacts 2 student loan transparency laws,"  
Associated Press State Wire: New Jersey, July 30, 2019

"N.J. mandates transparency for college costs College," The Star-Ledger, July 31, 2019

RWH/CL

Title 17.  
Subtitle 2.  
Part 9.  
Chapter 16ZZ  
(New)  
Student Loans  
§§1-16, 18&19 -  
C.17:16ZZ-1 to  
17:16ZZ-18  
§20 - Note

P.L. 2019, CHAPTER 200, *approved July 30, 2019*  
Senate, No. 1149 (*First Reprint*)

1 AN ACT <sup>1</sup>**[**establishing the Office of the **]** concerning the  
2 appointment of a<sup>1</sup> Student Loan Ombudsman <sup>1</sup>**[and]** <sup>1</sup>,<sup>1</sup> regulating  
3 student loan servicers <sup>1</sup>, amending P.L.2005, c.1991,<sup>1</sup> and  
4 supplementing Title 17 of the Revised Statutes.

5  
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
7 *of New Jersey:*

8  
9 1. <sup>1</sup>(New section)<sup>1</sup> As used in this act:  
10 "Commissioner" means the Commissioner of Banking and  
11 Insurance.

12 <sup>1</sup>"National Mortgage Licensing System and Registry" means the  
13 licensing system owned and operated by the State Regulatory  
14 Registry LLC, a wholly owned subsidiary of the Conference of  
15 State Bank Supervisors, which functions as a system of record for  
16 non-depository, financial services licensing or registration in  
17 participating state agencies, including the District of Columbia and  
18 United States Territories of Puerto Rico, the United States Virgin  
19 Islands, and Guam, where it is the official system for companies  
20 and individuals seeking to apply for, amend, renew and surrender  
21 license authorities.<sup>1</sup>

22 "Ombudsman" means the Student Loan Ombudsman appointed  
23 pursuant to section 2 of this act.

24 "Servicing" means: <sup>1</sup>**[(1)]**

25 a.<sup>1</sup> receiving any scheduled periodic payments from a student  
26 loan borrower <sup>1</sup>**[**pursuant to the terms of a student education loan;  
27 (2) applying the payments of principal and interest and other  
28 payments with respect to the amounts received from a student loan  
29 borrower, as may be required pursuant to the terms of a student  
30 education loan; and (3) performing other administrative services  
31 with respect to a student education loan.**]** or notification of such  
32 payments, and applying payments to the borrower's account

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AHI committee amendments adopted June 6, 2019.

1 pursuant to the terms of the student education loan or the contract  
2 governing the servicing of the loan;

3 b. during a period when no payment is required on the student  
4 education loan, maintaining account records for the loan and  
5 communicating with the student loan borrower regarding the loan,  
6 on behalf of the holder of the loan; or

7 c. interacting with a student loan borrower to facilitate the loan  
8 servicing as described in this definition, including activities to help  
9 prevent loan default on obligations arising from a student education  
10 loan.<sup>1</sup>

11 "Student education loan" means <sup>1</sup>any loan primarily for  
12 personal use to finance education <sup>1</sup>a loan that is extended to a  
13 student loan borrower expressly to finance postsecondary education  
14 expenses<sup>1</sup> or other school-related expenses <sup>1</sup>and shall not include  
15 open-end credit or any loan secured by real property<sup>1</sup>.

16 "Student loan borrower" means any resident of this State who  
17 has received or agreed to pay a student education loan; or any  
18 person who shares responsibility with a resident for repaying a  
19 student education loan.

20 "Student loan servicer" means any person, wherever located,  
21 responsible for the servicing of any student education loan to any  
22 student loan borrower.

23

24 2. <sup>1</sup>(New section)<sup>1</sup> <sup>1</sup>There is created within the Department  
25 of Banking and Insurance the Office of the Student Loan  
26 Ombudsman. The ombudsman shall be appointed by the Governor  
27 with the advice and consent of the Senate and shall serve at the  
28 pleasure of the Governor during the Governor's term of office. The  
29 ombudsman shall not hold any other office, position, or  
30 employment outside of the position of ombudsman. Any vacancy  
31 occurring in the position of ombudsman shall be filled in the same  
32 manner as the original appointment. If the ombudsman shall be  
33 unable for any reason to serve the full term of office, the Governor  
34 may designate an acting ombudsman until a successor is appointed  
35 and qualified.]

36 a. The commissioner shall designate a Student Loan  
37 Ombudsman within the Department of Banking and Insurance to  
38 carry out the duties and activities set forth in section 3 of this act.  
39 Contingent on the availability of funding, the department may hire  
40 additional staff as necessary to implement this act.

41 b. The ombudsman shall receive and review complaints from  
42 student loan borrowers. Any complaint received by the ombudsman  
43 in regard to a student loan servicer shall be referred to the  
44 commissioner. The ombudsman and the commissioner shall confer  
45 annually regarding student loan servicer complaints, the proper  
46 referral process for the complaints, and the ombudsman reporting  
47 requirement established pursuant to section 3 of this act.<sup>1</sup>

- 1       3. <sup>1</sup>(New section)<sup>1</sup> a. The <sup>1</sup>commissioner shall ensure that  
2 the<sup>1</sup> ombudsman <sup>1</sup>**【shall】<sup>1</sup> :**
- 3       (1) receive, review, and attempt to resolve any complaints from  
4 student <sup>1</sup>**【education】<sup>1</sup> loan borrowers, including, but not limited to,  
5 attempts to resolve those complaints in collaboration with  
6 institutions of higher education, student loan servicers, and any  
7 other participants in student education loan lending;**
- 8       (2) compile and analyze data on student loan borrower  
9 complaints as described in paragraph (1) of this subsection;
- 10       (3) assist student loan borrowers to understand their rights and  
11 responsibilities under the terms of student education loans;
- 12       (4) provide information to the public, agencies, legislators, and  
13 others regarding the problems and concerns of student loan  
14 borrowers, and make recommendations for resolving those  
15 problems and concerns;
- 16       (5) analyze and monitor the development and implementation of  
17 federal, State, and local laws, regulations, and policies relating to  
18 student loan borrowers and recommend any changes the Student  
19 Loan Ombudsman deems necessary;
- 20       (6) review the complete student education loan history for any  
21 student loan borrower who has provided written consent for review;
- 22       (7) disseminate information concerning the availability of the  
23 Student Loan Ombudsman to assist student loan borrowers and  
24 potential student loan borrowers, <sup>1</sup>**【as well as public】** including  
25 disseminating the information to<sup>1</sup> institutions of higher education,  
26 student loan servicers, and any other participant in student  
27 education loan lending, with any student loan servicing concerns;  
28 and
- 29       (8) take any other actions necessary to fulfill the duties of the  
30 Student Loan Ombudsman as set forth in this section.
- 31       b. No later than October 1, <sup>1</sup>**【2019】 2020<sup>1</sup>, the <sup>1</sup>commissioner  
32 shall ensure that the<sup>1</sup> Student Loan Ombudsman <sup>1</sup>**【**, in consultation  
33 with the commissioner, shall **】** and the Higher Education Student  
34 Assistance Authority<sup>1</sup> establish and maintain a student loan  
35 borrower education course that shall include educational  
36 presentations and materials regarding student education loans. The  
37 program shall include, but not be limited to, key loan terms,  
38 documentation requirements, monthly payment obligations, income-  
39 based repayment options, loan forgiveness, and disclosure  
40 requirements.**
- 41       c. No later than <sup>1</sup>**【January 1, 2019】** 12 months following the  
42 date of appointment of the ombudsman pursuant to section 2 of this  
43 act<sup>1</sup>, and annually thereafter, the <sup>1</sup>**【commissioner】** Student Loan  
44 Ombudsman<sup>1</sup> shall submit a report to the <sup>1</sup>**【standing committees of**  
45 **the General Assembly and Senate having cognizance of matters**  
46 **relating to banking and higher education】** Commissioner of  
47 Banking and Insurance and the Secretary of Higher Education<sup>1</sup> .

1 The <sup>1</sup>~~commissioner~~ ombudsman<sup>1</sup> shall report on: (1) the  
2 implementation of this section; (2) the overall effectiveness of the  
3 Student Loan Ombudsman position; and (3) additional steps that  
4 need to be taken for the Department of Banking and Insurance to  
5 gain regulatory control over the licensing and enforcement of  
6 student loan servicers.

7  
8 4. <sup>1</sup>~~(New section)~~<sup>1</sup> a. (1) No person shall act as a student loan  
9 servicer, directly or indirectly, without first obtaining a license from  
10 the commissioner under subsection b. of this section, unless that  
11 person is exempt from licensure pursuant to paragraph (2) of this  
12 subsection.

13 (2) The following persons are exempt from subsection a. of this  
14 section: (a) any State or federally chartered bank, savings bank,  
15 savings and loan association, or credit union; (b) any wholly owned  
16 subsidiary of any bank or credit union; and (c) any operating  
17 subsidiary where each owner of the operating subsidiary is wholly  
18 owned by the same bank or credit union.

19 b. Any person seeking to act within this State as a student loan  
20 servicer shall make a written application to the commissioner for an  
21 initial license in the form prescribed by the commissioner <sup>1</sup>utilizing  
22 the Nationwide Mortgage Licensing System and Registry<sup>1</sup> . The  
23 application shall be accompanied by:

24 (1) a financial statement prepared by a certified public  
25 accountant or a public accountant, the accuracy of which is sworn  
26 to under oath before a notary public by the applicant, proprietor, a  
27 general partner or a corporate officer, or a member duly authorized  
28 to execute those documents;

29 (2) (a) the history of criminal convictions of the: (i) applicant;  
30 (ii) partners, if the applicant is a partnership; (iii) members, if the  
31 applicant is a limited liability company or association; or (iv)  
32 officers, directors and principal employees, if the applicant is a  
33 corporation; and

34 (b) sufficient information pertaining to the history of criminal  
35 convictions of that applicant, partners, members, officers, directors  
36 or principal employees as the commissioner deems necessary to  
37 make the findings under subsection c. of this section;

38 (3) a nonrefundable license fee of <sup>1</sup>~~[\$1,000; and] \$5,000;~~<sup>1</sup>

39 (4) a nonrefundable investigation fee <sup>1</sup>~~[of \$800] in such~~  
40 amount as determined by the commissioner; and

41 (5) a fee paid to the Nationwide Mortgage Licensing System and  
42 Registry as established by that entity<sup>1</sup> .

43 The commissioner may conduct a State and national criminal  
44 history records check of the applicant and of each partner, member,  
45 officer, director and principal employee of the applicant.

46 c. Upon the filing of an application for an initial license and  
47 the payment of the fees for license and investigation, the  
48 commissioner shall investigate the financial condition and

1 responsibility, financial and business experience, character and  
2 general fitness of the applicant. The commissioner may issue a  
3 license if the commissioner finds that:

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

5 (2) the applicant's business will be conducted honestly, fairly,  
6 equitably, carefully and efficiently within the purposes and intent of  
7 this act, and in a manner commanding the confidence and trust of  
8 the community;

9 (3) (a) if the applicant is an individual, the individual is in all  
10 respects properly qualified and of good character;

11 (b) if the applicant is a partnership, each partner is in all  
12 respects properly qualified and of good character;

13 (c) if the applicant is a corporation or association, the president,  
14 chairperson of the executive committee, senior officer responsible  
15 for the corporation's business and chief financial officer or any  
16 other person who performs similar functions as determined by the  
17 commissioner, each director, each trustee and each shareholder  
18 owning 10 percent or more of each class of the securities of the  
19 corporation is in all respects properly qualified and of good  
20 character; or

21 (d) if the applicant is a limited liability company, each member  
22 is in all respects properly qualified and of good character;

23 (4) neither the applicant nor any person on behalf of the  
24 applicant knowingly has made any incorrect statement of a material  
25 fact in the application, or in any report or statement made pursuant  
26 to this act;

27 (5) neither the applicant nor any person on behalf of the  
28 applicant knowingly has omitted to state any material fact necessary  
29 to give the commissioner any information lawfully required by the  
30 commissioner;

31 (6) the applicant has paid the investigation fee and the license  
32 fee required under subsection b. of this section; and

33 (7) the applicant has met any other similar requirements as  
34 determined by the commissioner.

35 d. A license issued pursuant to subsection c. of this section  
36 shall expire at the close of business on <sup>1</sup>~~September 30~~ December  
37 31<sup>1</sup> of the <sup>1</sup>~~odd-numbered~~<sup>1</sup> year <sup>1</sup>~~following~~ of<sup>1</sup> its issuance,  
38 unless renewed or earlier surrendered, suspended or revoked  
39 pursuant to this act. Not later than 15 days after a licensee ceases to  
40 engage in the business of student loan servicing in this State for any  
41 reason, including a business decision to terminate operations in this  
42 State, license revocation, bankruptcy or voluntary dissolution, the  
43 licensee shall provide written notice of surrender to the  
44 commissioner and shall surrender to the commissioner its license  
45 for each location in which the licensee has ceased to engage in  
46 business. The written notice of surrender shall identify the location  
47 where the records of the licensee will be stored and the name,  
48 address and telephone number of an individual authorized to  
49 provide access to the records. The surrender of a license does not

1 reduce or eliminate the licensee's civil or criminal liability arising  
2 from acts or omissions occurring prior to the surrender of the  
3 license, including any administrative actions undertaken by the  
4 commissioner to revoke or suspend a license, assess a civil penalty,  
5 order restitution or exercise any other authority provided to the  
6 commissioner.

7 e. A license may be renewed for the ensuing <sup>1</sup>~~24~~ 12<sup>1</sup> month  
8 period upon the filing of an application containing all required  
9 documents and fees as provided in subsection b. of this section.  
10 The renewal application shall be filed on or before <sup>1</sup>~~September~~  
11 December<sup>1</sup> 1 of the year in which the license expires. Any renewal  
12 application filed with the commissioner after <sup>1</sup>~~September~~  
13 December<sup>1</sup> 1 shall be accompanied by a <sup>1</sup>~~\$100~~<sup>1</sup> late fee <sup>1</sup>~~of \$100~~  
14 per day. A license will not be renewed until the license fee and any  
15 applicable late fees have been received<sup>1</sup> . If an application for a  
16 renewal license has been filed with the commissioner on or before  
17 the date the license expires, the license sought to be renewed shall  
18 continue in full force and effect until the issuance by the  
19 commissioner of the renewal license applied for or until the  
20 commissioner has notified the licensee in writing of the  
21 commissioner's refusal to issue the renewal license together with  
22 the grounds upon which that refusal is based. The commissioner  
23 may refuse to issue a renewal license on any ground on which the  
24 commissioner might refuse to issue an initial license.

25 f. The applicant or licensee shall notify the commissioner, in  
26 writing, of any change in the information provided in its initial  
27 application for a license or its most recent renewal application for  
28 the license, as applicable, not later than 10 business days after the  
29 occurrence of the event that results in the information becoming  
30 inaccurate.

31 g. The commissioner may deem an application for a license  
32 abandoned if the applicant fails to respond to any request for  
33 information required under this act. The commissioner shall notify  
34 the applicant, in writing, that if the applicant fails to submit any  
35 information not later than 60 days after the date on which the  
36 request for information was made, the application shall be deemed  
37 abandoned. An application filing fee paid prior to the date an  
38 application is deemed abandoned pursuant to this subsection shall  
39 not be refunded. Abandonment of an application pursuant to this  
40 subsection shall not preclude the applicant from submitting a new  
41 application for a license under the provisions of this act.

42  
43 <sup>1</sup>5. (New section) The commissioner shall automatically issue a  
44 limited, irrevocable license to any person servicing a student loan  
45 under contract with the United States Department of Education as  
46 follows:

47 a. Any person seeking to act within this State as a student loan  
48 servicer is exempt from the application procedures established



1 pursuant to subsection b. of section 4 of this act, other than the  
2 requirements of paragraph (3) and paragraph (4), to the extent that  
3 the student loan servicing performed in this State is conducted  
4 pursuant to a contract awarded by the United States Secretary of  
5 Education under 20 U.S.C. s.1087f. The procedure to document  
6 eligibility for the exemption shall be prescribed by the  
7 commissioner.

8 b. Any person deemed exempt by the commissioner pursuant to  
9 subsection a. of this section shall be issued a license by the  
10 commissioner for the servicing of student loans under contract with  
11 the United States Department of Education and shall be considered  
12 by the commissioner to have met all requirements established in  
13 subsection c. of section 4 of this act.

14 c. The provisions of subsections d. through g. of section 4 of  
15 this act and subsection a. of section 10 of this act shall not be  
16 applicable to a person issued a limited license pursuant to this  
17 section to the extent that the person is servicing federal student  
18 loans. A person shall not be exempt from subsections d. through g.  
19 of section 4 of this act or subsection a. of section 10 to the extent  
20 that the person is also servicing non-federal loans.

21 d. Any person issued a license pursuant to this section shall  
22 provide the commissioner with written notice within seven days  
23 following the notification of the expiration, revocation, or  
24 termination of any contract awarded by the United States Secretary  
25 of Education under 20 U.S.C s.1087f. The person shall have 30  
26 days to satisfy all requirements established under this act in order to  
27 continue to act within this State as a student loan servicer unless the  
28 person is also licensed to service non-federal loans in New Jersey.  
29 At the expiration of the 30-day period, if the person has not  
30 satisfied the requirements established pursuant to this act, the  
31 commissioner shall immediately suspend any license granted under  
32 this section.

33 e. In the case of student loan servicing that is not conducted  
34 pursuant to a contract awarded by the United States Secretary of  
35 Education under 20 U.S.C. s.1087f, nothing in this section shall  
36 prevent the commissioner from issuing an order to temporarily or  
37 permanently prohibit any person from acting as a student loan  
38 servicer.

39 f. In the case of student loan servicing conducted pursuant to a  
40 contract awarded by the United States Secretary of Education under  
41 20 U.S.C s.1087f, nothing in the section shall prevent the  
42 commissioner from issuing a cease and desist or injunction against  
43 any student loan servicer to cease activities in violation of this act  
44 or the New Jersey consumer fraud act, P.L.1960, c.39 (C.56:8-1 et  
45 seq.).<sup>1</sup>

46

47 <sup>1</sup>**[5.] 6. (New section) a.**<sup>1</sup> No person licensed to act within this  
48 State as a student loan servicer shall do so under any other name or  
49 at any other place of business than that named in the license. Any

1 change of location of a place of business of a licensee shall require  
2 prior written notice to the commissioner. Not more than one place  
3 of business shall be maintained under the same license but the  
4 commissioner may issue more than one license to the same licensee  
5 upon compliance with the provisions of this act as to each new  
6 licensee. A license shall not be transferable or assignable.

7 <sup>1</sup>b. A student loan servicer shall keep on file with the  
8 commissioner a surety bond obtained from a surety company  
9 authorized to transact business in this State in an amount of not less  
10 than \$30,000. The commissioner shall, by regulation, provide who  
11 shall be eligible to receive the protection afforded by the bond and  
12 may increase the required bond amount, if he determines it to be  
13 necessary. When an action is commenced on the bond, the  
14 commissioner may require the filing of a new bond and  
15 immediately on recovery of any action on the bond, the student loan  
16 servicer shall file a new bond.<sup>1</sup>

17  
18 <sup>1</sup>[6.] 7. (New section)<sup>1</sup> a. <sup>1</sup>[Each] Except as otherwise  
19 required pursuant to federal law, a federal student education loan  
20 agreement, or a contract between the federal government and a  
21 licensee, each<sup>1</sup> student loan servicer licensee and persons exempt  
22 from licensure pursuant to paragraph (2) of subsection a. of section  
23 4 of this act shall maintain adequate records of each student  
24 education loan transaction for not less than two years following the  
25 final payment on that student education loan or the assignment of  
26 that student education loan, whichever occurs first <sup>1</sup>[, or any longer  
27 period as may be required by any other provision of law]<sup>1</sup>.

28 b. If requested by the commissioner, each student loan servicer  
29 shall make records available or send records to the commissioner by  
30 registered or certified mail, return receipt requested, or by any  
31 express delivery carrier that provides a dated delivery receipt, not  
32 later than five business days after requested by the commissioner to  
33 do so. Upon request, the commissioner may grant a licensee  
34 additional time to make records available or send the records to the  
35 commissioner.

36  
37 <sup>1</sup>8. (New section) Except as otherwise provided pursuant to  
38 federal law, federal student education loan agreements, or a contract  
39 between the federal government and a student loan servicer, a  
40 student loan servicer shall:

41 a. Upon receipt of a written inquiry from a student loan  
42 borrower or the representative of a student loan borrower, a student  
43 loan servicer shall respond by:

44 (1) acknowledging receipt of the inquiry within 10 business  
45 days; and

46 (2) providing information relating to the inquiry, and, if  
47 applicable, the action the student loan servicer will take to correct

1 the account, or an explanation of the student loan servicer's position  
2 that the borrower's account is correct, within 30 business days.

3 b. A student loan servicer shall inquire of a student loan  
4 borrower how to apply an overpayment to a student education loan.  
5 A borrower's instruction on how to apply an overpayment to a  
6 student education loan shall stay in effect for any future  
7 overpayments during the term of the student education loan until  
8 the borrower provides different instructions. For purposes of this  
9 subsection, "overpayment" means a payment on a student education  
10 loan in excess of the monthly amount due from the student loan  
11 borrower on a student education loan, commonly referred to as a  
12 prepayment.

13 c. A student loan servicer shall apply partial payments in a  
14 manner that minimizes late fees and negative credit reporting. If  
15 there are multiple loans on a borrower's account with an equal stage  
16 of delinquency, a student loan servicer shall satisfy the  
17 requirements of this subsection by applying partial payments to  
18 satisfy as many individual loan payments as possible on a  
19 borrower's account. For purposes of this subsection, "partial  
20 payment" means a payment on a student education loan account that  
21 contains multiple individual loans in an amount less than the  
22 amount necessary to satisfy the outstanding payment due on all  
23 loans in the student education loan account, commonly referred to  
24 as an underpayment.

25 d. The following requirements shall be applicable to a student  
26 loan servicer in the event of the sale, assignment, or other transfer  
27 of the servicing of a student education loan that results in a change  
28 in the identity of the person to whom a student loan borrower is  
29 required to send payments or direct any communication concerning  
30 the student education loan:

31 (1) as a condition of a sale, an assignment, or any other transfer  
32 of the servicing of a student education loan, a student loan servicer  
33 shall require the new student loan servicer to honor all benefits  
34 originally represented as available to a student loan borrower during  
35 the repayment of the student education loan and preserve the  
36 availability of those benefits, including any benefits for which the  
37 student loan borrower has not yet qualified;

38 (2) a student loan servicer shall transfer to the new student loan  
39 servicer for the student education loan all information regarding the  
40 student loan borrower, the account of the borrower, and the student  
41 education loan of the borrower. The information shall include the  
42 repayment status of the student loan borrower and any benefits  
43 associated with the student education loan of the borrower;

44 (3) the student loan servicer shall complete the transfer of  
45 information required pursuant to paragraph (2) of this subsection  
46 within 45 calendar days after the sale, assignment, or other transfer  
47 of the servicing of the student education loan; and

1       (4) the sale, assignment, or other transfer of the servicing of a  
2 student education loan shall be completed at least seven calendar  
3 days before the next payment on the student education loan is due.

4       e. A student loan servicer who obtains the right to service a  
5 student education loan shall adopt policies and procedures to verify  
6 that the student loan servicer has received all information regarding  
7 the student loan borrower, the account of the student loan borrower,  
8 and the student education loan of the student loan borrower  
9 including, but not limited to, the repayment status of the student  
10 loan borrower and any benefits associated with the student  
11 education loan of the student loan borrower.

12       f. A student loan servicer shall evaluate a student loan  
13 borrower for eligibility for an income-driven repayment program  
14 prior to placing the borrower in forbearance or default, if an  
15 income-driven repayment program is available to the borrower.<sup>1</sup>

16  
17       <sup>1</sup>**[7.] 9. (New section)**<sup>1</sup> No student loan servicer shall:

18       a. directly or indirectly employ any scheme, device or artifice  
19 to defraud or mislead student loan borrowers;

20       b. engage in any unfair or deceptive practice toward any person  
21 or misrepresent or omit any material information in connection with  
22 the servicing of a student education loan, including, but not limited  
23 to, misrepresenting the amount, nature or terms of any fee or  
24 payment due or claimed to be due on a student education loan, the  
25 terms and conditions of the loan agreement or the borrower's  
26 obligations under the loan;

27       c. obtain property by fraud or misrepresentation;

28       d. <sup>1</sup>**[knowingly]**<sup>1</sup> misapply <sup>1</sup>**[or recklessly apply]**<sup>1</sup> student  
29 education loan payments to the outstanding balance of a student  
30 education loan;

31       e. <sup>1</sup>**[knowingly or recklessly]**<sup>1</sup> provide inaccurate information  
32 to a credit bureau, thereby harming a student loan borrower's  
33 creditworthiness;

34       f. fail to report both the favorable and unfavorable payment  
35 history of the student loan borrower to a nationally recognized  
36 consumer credit bureau at least annually if the student loan servicer  
37 regularly reports information to a credit bureau;

38       g. refuse to communicate with an authorized representative of  
39 the student loan borrower who provides a written authorization  
40 signed by the student loan borrower, provided the student loan  
41 servicer may adopt procedures reasonably related to verifying that  
42 the representative is in fact authorized to act on behalf of the  
43 student loan borrower; <sup>1</sup>**[or]**<sup>1</sup>

44       h. <sup>1</sup>**[negligently]**<sup>1</sup> make any false statement or knowingly and  
45 willfully make any omission of a material fact in connection with  
46 any information or reports filed with a governmental agency or in  
47 connection with any investigation conducted by the commissioner  
48 or another governmental agency <sup>1</sup>;

1       i. fail to respond within 15 business days to communications  
2 from the Department of Banking and Insurance, or within such  
3 shorter, reasonable period of time as may be requested by the  
4 department; or

5       j. fail to respond within 15 business days to a consumer  
6 complaint submitted to the student loan servicer by the department.  
7 If necessary, the student loan servicer may request additional time  
8 to respond to the complaint, up to a maximum of 45 business days,  
9 provided that the request is accompanied by an explanation on why  
10 additional time is reasonable and necessary<sup>1</sup> .

11  
12       <sup>1</sup>[8.] 10. (New section)<sup>1</sup> a. In addition to any authority  
13 provided under Title 17 of the Revised Statutes, the commissioner  
14 shall have the authority to conduct investigations and examinations  
15 as follows:

16       (1) For purposes of initial licensing, license renewal, license  
17 suspension, license revocation or termination, or general or specific  
18 inquiry or investigation to determine compliance with this act, the  
19 commissioner may access, receive and use any books, accounts,  
20 records, files, documents, information or evidence including, but  
21 not limited to: (a) criminal, civil and administrative history  
22 information; (b) personal history and experience information,  
23 including independent credit reports obtained from a consumer  
24 reporting agency described in Section 603(p) of the “Fair Credit  
25 Reporting Act” (15 U.S.C. s.1681a); and (c) any other documents,  
26 information or evidence the commissioner deems relevant to the  
27 inquiry or investigation regardless of the location, possession,  
28 control or custody of documents, information or evidence.

29       (2) For the purposes of investigating violations or complaints  
30 arising under this act or for the purposes of examination, the  
31 commissioner may review, investigate or examine any student loan  
32 servicer licensee or person subject to this act. The commissioner  
33 may direct, subpoena or order the attendance of and examine under  
34 oath all persons whose testimony may be required about the student  
35 education loan or the business or subject matter of any examination  
36 or investigation, and may direct, subpoena or order any person  
37 subject to this act to produce books, accounts, records, files and any  
38 other documents the commissioner deems relevant to the inquiry.

39       b. In making any examination or investigation authorized by  
40 this section, the commissioner may control access to any documents  
41 and records of the student loan servicer licensee or person under  
42 examination or investigation. The commissioner may take  
43 possession of the documents and records or place a person in  
44 exclusive charge of the documents and records in the place where  
45 they are usually kept. During the period of control, no person shall  
46 remove or attempt to remove any of the documents and records  
47 except pursuant to a court order or with the consent of the  
48 commissioner. Unless the commissioner has reasonable grounds to  
49 believe the documents or records of the student loan servicer

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

6 c. <sup>1</sup>**[In order to carry out the purposes of this section]** When  
7 making an examination or investigation under this act<sup>1</sup>, the  
8 commissioner may:

9 (1) retain attorneys, <sup>1</sup>appraisers, independent actuaries,  
10 independent certified public<sup>1</sup> accountants or other professionals and  
11 specialists as examiners, <sup>1</sup>**[auditors or investigators to conduct or**  
12 **assist in the conduct of examinations or investigations]** the cost of  
13 which shall be borne by the company which is the subject of the  
14 examination or investigation<sup>1</sup> ;

15 (2) enter into agreements or relationships with other government  
16 officials or regulatory associations in order to improve efficiencies  
17 and reduce regulatory burden by sharing resources, standardized or  
18 uniform methods or procedures, and documents, records,  
19 information or evidence obtained under this section;

20 (3) use, hire, contract or employ public or privately available  
21 analytical systems, methods or software to examine or investigate  
22 the student loan servicer licensee or any person subject to this act;

23 (4) accept and rely on examination or investigation reports made  
24 by other government officials, within or without this State; and

25 (5) accept audit reports made by an independent certified public  
26 accountant for the student loan servicer licensee or person subject to  
27 this act in the course of that part of the examination covering the  
28 same general subject matter as the audit and may incorporate the  
29 audit report in the report of examination, report of investigation or  
30 other writing of the commissioner.

31 d. The authority of this section shall remain in effect, whether  
32 the student loan servicer licensee or person subject to this act, acts  
33 or claims to act under any licensing or registration law of this State,  
34 or claims to act without that authority.

35 e. No student loan servicer licensee or person subject to  
36 investigation or examination under this section may knowingly  
37 withhold, abstract, remove, mutilate, destroy or secrete any books,  
38 records, computer records or other information.

39  
40 <sup>1</sup>**[9.] 11. (New section)**<sup>1</sup> a. The commissioner may suspend,  
41 revoke or refuse to renew any license issued under the provisions of  
42 subsection c. of section 4 of this act, or take any other action, if the  
43 commissioner finds that: (1) the licensee has violated any provision  
44 of this act or any regulation made pursuant to this act; or (2) any  
45 fact or condition exists which, if it had existed at the time of the  
46 original application for the license, clearly would have warranted a  
47 denial of the license. No abatement of the license fee shall be made

1 if the license is surrendered, revoked, or suspended prior to the  
2 expiration of the period for which it was issued.

3 b. (1) Whenever it appears to the commissioner that any  
4 person has violated, is violating or is about to violate any of the  
5 provisions of this act, or any regulation adopted pursuant to this act,  
6 or any licensee or any owner, director, officer, member, partner,  
7 shareholder, trustee, employee or agent of a licensee has committed  
8 any fraud, engaged in dishonest activities or made any  
9 misrepresentation, the commissioner may bring a civil suit in a  
10 court of competent jurisdiction to enjoin the violation or potential  
11 violation, seek civil penalties pursuant to paragraph (2) of this  
12 subsection, or both.

13 (2) Any person who violates any provision of this act shall be  
14 liable, in a civil action brought by the commissioner in a court of  
15 competent jurisdiction, for a penalty of not more than <sup>1</sup>[\$5,000]  
16 \$10,000<sup>1</sup> for the first violation, <sup>1</sup>[\$10,000] and \$20,000<sup>1</sup> for the  
17 second <sup>1</sup>[violation and \$15,000 for] and<sup>1</sup> each subsequent  
18 <sup>1</sup>[violation] offense<sup>1</sup>. The penalty shall be paid to the  
19 commissioner to be used in accordance with this act and shall be  
20 collected pursuant to the "Penalty Enforcement Law of 1999,"  
21 P.L.1999, c.274 (C.2A:58-10 et seq.). The court shall also award  
22 court costs and reasonable attorneys' fees to the commissioner.  
23

24 <sup>1</sup>12. (New section) A student loan borrower who suffers any  
25 ascertainable loss of moneys as a result of the use or employment  
26 by a student loan servicer of any method, act, or practice declared  
27 unlawful under this act may bring an action or assert a counterclaim  
28 therefor in any court of competent jurisdiction. In any action under  
29 this section the court shall, in addition to any other appropriate legal  
30 or equitable relief, award threefold the damages sustained by the  
31 student loan borrower. In all actions under this section, the court  
32 shall also award reasonable attorneys' fees, filing fees, and  
33 reasonable costs of suit.<sup>1</sup>  
34

35 <sup>1</sup>13. (New section) The remedies provided in this act are not  
36 intended to be the exclusive remedies available to a student loan  
37 borrower, and a student loan borrower shall not be required to  
38 exhaust administrative remedies established pursuant to this act or  
39 any other applicable law prior to proceeding under this act.<sup>1</sup>  
40

41 <sup>1</sup>[10.] 14. (New section)<sup>1</sup> A student loan servicer shall comply  
42 with all applicable federal laws and regulations relating to student  
43 loan servicing, including, but not limited to, the "Truth in Lending  
44 Act" (15 U.S.C. s.1601 et seq.). In addition to any other remedies  
45 provided by law, a violation of any federal law or regulation shall  
46 be deemed a violation of this section and a basis upon which the  
47 commissioner may take enforcement action pursuant to section <sup>1</sup>[9]  
48 11<sup>1</sup> of this act.

1 <sup>1</sup>15. (New section) a. (1) A student loan servicer licensee shall  
2 annually file a report with the commissioner, which shall set forth  
3 any information as the commissioner shall require concerning the  
4 business conducted as a licensee during the preceding calendar  
5 year. The report shall be under oath and in a form and within the  
6 time specified by the commissioner by regulation.

7 (2) A student loan servicer licensee shall additionally submit to  
8 the Nationwide Mortgage Licensing System and Registry a student  
9 loan servicer call report of condition, in the form and manner, and  
10 with any information, at any time as may be required by that entity,  
11 and any other report to, or through, the entity pursuant to any  
12 arrangement for reporting and sharing information as may be  
13 required by law or regulation.

14 b. Any negligently made false statement or knowing omission  
15 of material fact in connection with any report or supporting  
16 information filed with the commissioner, the Nationwide Mortgage  
17 Licensing System and Registry, through that entity with any federal  
18 or State agency, shall be deemed a violation of this act.

19 c. A licensee that fails to make and file its annual report with  
20 the commissioner, or any report with or through the Nationwide  
21 Mortgage Licensing System and Registry, in the form and within  
22 the time provided in this section, shall be subject to a penalty  
23 payable to the commissioner of not more than \$100 for each day's  
24 failure concerning the annual report, and any penalty for a failure  
25 concerning a report to be filed with or through the Nationwide  
26 Mortgage Licensing System and Registry, payable to that entity,  
27 and the commissioner, as authorized pursuant to section 11 of this  
28 act may revoke or suspend the licensee's authority to do business in  
29 this State. The penalty shall be collected in a summary proceeding  
30 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,  
31 c.274 (C.2A:58-10 et seq.). A warrant may issue in lieu of a  
32 summons.<sup>1</sup>

33  
34 <sup>1</sup>[11. All costs of the implementation of this act shall be  
35 regarded as administrative costs of the Department of Banking and  
36 Insurance. Moneys collected from license fees, inspections, or  
37 violations pursuant to this act shall be expended by the  
38 commissioner for the purpose of administering the provisions of  
39 this act.]

40  
41 16. (New section) Student loan servicer licensees shall be  
42 assessed annually an amount sufficient to cover annual costs of the  
43 implementation of this act. Assessments shall be effectuated in  
44 accordance with P.L.2005, c.199 (C.17:1C-33 et seq.) as amended  
45 by P.L. , c. (C. ) (pending before the Legislature as this bill),  
46 and its implementing rules. Moneys collected from license fees,  
47 inspections, or violations pursuant to this act shall be expended by



1 the commissioner for the purpose of administering the provisions of  
2 this act.<sup>1</sup>

3

4 <sup>1</sup>17. Section 2 of P.L.2005, c.199 (C.17:1C-34) is amended to  
5 read as follows.

6 2. For the purposes of this act:

7 "Assessment" means the assessment imposed pursuant to section  
8 3 of this act for the special functions of the division as provided in  
9 that section.

10 "Commissioner" means the Commissioner of Banking and  
11 Insurance.

12 "Department" means the Department of Banking and Insurance.

13 "Depository institution" means any entity holding a state charter  
14 for a bank, savings bank, savings and loan association or credit  
15 union, irrespective of whether the entity accepts deposits.

16 "Division" means the Division of Banking in the Department of  
17 Banking and Insurance.

18 "Nationwide Mortgage Licensing System and Registry" means  
19 the mortgage licensing system developed and maintained by the  
20 Conference of State Bank Supervisors and the American  
21 Association of Residential Mortgage Regulators, or their  
22 successors, and utilized in this State pursuant to the provisions of  
23 the "New Jersey Residential Mortgage Lending Act," sections 1  
24 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.).

25 "Other financial entity" means a person who is licensed or  
26 registered pursuant to: the "New Jersey Consumer Finance  
27 Licensing Act," sections 1 through 49 of P.L.1996, c.157  
28 (C.17:11C-1 et seq.); the "New Jersey Residential Mortgage  
29 Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-  
30 51 et seq.), other than a financial entity with respect to the payment  
31 of required fees to the Nationwide Mortgage Licensing System and  
32 Registry as set forth by that nationwide system and registry; "The  
33 Check Cashers Regulatory Act of 1993," P.L.1993, c.383  
34 (C.17:15A-30 et seq.); the "New Jersey Money Transmitters Act,"  
35 P.L.1998, c.14 (C.17:15C-1 et seq.); the "Insurance Premium  
36 Finance Company Act," P.L.1968, c.221 (C.17:16D-1 et seq.); the  
37 "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1  
38 et seq.); the "Door-to-Door Retail Installment Sales Act of 1968,"  
39 P.L.1968, c.223 (C.17:16C-61.1 et seq.); the "Home Repair  
40 Financing Act," P.L.1960, c.41 (C.17:16C-62 et seq.); the "Door-to-  
41 Door Home Repair Sales Act of 1968," P.L.1968, c.224 (C.17:16C-  
42 95 et seq.); P.L.1979, c.16 (C.17:16G-1 et seq.); the "Foreclosure  
43 Rescue Fraud Prevention Act," P.L.2011, c.146 (C.46:10B-53 et  
44 al.); **the "Mortgage Servicers Licensing Act," P.L.2019, c.65**  
45 **(C.17:16F-27 et al.)** the provisions of P.L. , c. (C. )  
46 (pending before the Legislature as this bill) ; or the "pawnbroking  
47 law," R.S.45:22-1 et seq.

1       **【**"Nationwide Mortgage Licensing System and Registry" means  
2 the mortgage licensing system developed and maintained by the  
3 Conference of State Bank Supervisors and the American  
4 Association of Residential Mortgage Regulators, or their  
5 successors, and utilized in this State pursuant to the provisions of  
6 the "New Jersey Residential Mortgage Lending Act," sections 1  
7 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.).**】**

8       "Regulated entity" means a depository institution, other financial  
9 entity or person chartered, licensed or registered by the Division of  
10 Banking or who should be chartered, licensed or registered.<sup>1</sup>  
11 (cf: P.L.2019, c.65, s.21)

12  
13       <sup>1</sup>**【12.】** 18. (New section)<sup>1</sup> The Commissioner of Banking and  
14 Insurance shall, in accordance with the "Administrative Procedure  
15 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt the rules and  
16 regulations necessary to implement the provisions of this act.

17  
18       <sup>1</sup>19. (New section) If any provision of this act or the application  
19 thereof to any person or circumstance is held invalid for any reason  
20 in a court of competent jurisdiction, the invalidity shall not affect  
21 other provisions or any other application of this act which can be  
22 given effect without the invalid provision or application, and for  
23 this purpose the provisions of this act are declared severable.<sup>1</sup>

24  
25       <sup>1</sup>**【13.】** 20.<sup>1</sup> This act shall take effect on the 120th day next  
26 following enactment, provided that the Commissioner of Banking  
27 and Insurance may take any anticipatory actions necessary to  
28 implement the provisions of this act.

29  
30  
31  
32  
33       \_\_\_\_\_  
34 Provides for appointment of Student Loan Ombudsman and  
regulates student loan servicers.

# SENATE, No. 1149

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JANUARY 25, 2018

**Sponsored by:**

**Senator SANDRA B. CUNNINGHAM**

**District 31 (Hudson)**

**Senator CHRIS A. BROWN**

**District 2 (Atlantic)**

**Co-Sponsored by:**

**Senators Ruiz, Beach and Gordon**

**SYNOPSIS**

Establishes Office of Student Loan Ombudsman; regulates student loan servicers.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/27/2018)**

1 AN ACT establishing the Office of the Student Loan Ombudsman  
2 and regulating student loan servicers and supplementing Title 17  
3 of the Revised Statutes.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. As used in this act:

9 "Commissioner" means the Commissioner of Banking and  
10 Insurance.

11 "Ombudsman" means the Student Loan Ombudsman appointed  
12 pursuant to section 2 of this act.

13 "Servicing" means: (1) receiving any scheduled periodic  
14 payments from a student loan borrower pursuant to the terms of a  
15 student education loan; (2) applying the payments of principal and  
16 interest and other payments with respect to the amounts received  
17 from a student loan borrower, as may be required pursuant to the  
18 terms of a student education loan; and (3) performing other  
19 administrative services with respect to a student education loan.

20 "Student education loan" means any loan primarily for personal  
21 use to finance education or other school-related expenses.

22 "Student loan borrower" means any resident of this State who  
23 has received or agreed to pay a student education loan; or any  
24 person who shares responsibility with a resident for repaying a  
25 student education loan.

26 "Student loan servicer" means any person, wherever located,  
27 responsible for the servicing of any student education loan to any  
28 student loan borrower.

29  
30 2. There is created within the Department of Banking and  
31 Insurance the Office of the Student Loan Ombudsman. The  
32 ombudsman shall be appointed by the Governor with the advice and  
33 consent of the Senate and shall serve at the pleasure of the  
34 Governor during the Governor's term of office. The ombudsman  
35 shall not hold any other office, position, or employment outside of  
36 the position of ombudsman. Any vacancy occurring in the position  
37 of ombudsman shall be filled in the same manner as the original  
38 appointment. If the ombudsman shall be unable for any reason to  
39 serve the full term of office, the Governor may designate an acting  
40 ombudsman until a successor is appointed and qualified.

41  
42 3. a. The ombudsman shall:

43 (1) receive, review, and attempt to resolve any complaints from  
44 student education loan borrowers, including, but not limited to,  
45 attempts to resolve those complaints in collaboration with institutions  
46 of higher education, student loan servicers, and any other participants  
47 in student education loan lending;

1 (2) compile and analyze data on student loan borrower complaints  
2 as described in paragraph (1) of this subsection;

3 (3) assist student loan borrowers to understand their rights and  
4 responsibilities under the terms of student education loans;

5 (4) provide information to the public, agencies, legislators, and  
6 others regarding the problems and concerns of student loan borrowers,  
7 and make recommendations for resolving those problems and  
8 concerns;

9 (5) analyze and monitor the development and implementation of  
10 federal, State, and local laws, regulations, and policies relating to  
11 student loan borrowers and recommend any changes the Student Loan  
12 Ombudsman deems necessary;

13 (6) review the complete student education loan history for any  
14 student loan borrower who has provided written consent for review;

15 (7) disseminate information concerning the availability of the  
16 Student Loan Ombudsman to assist student loan borrowers and  
17 potential student loan borrowers, as well as public institutions of  
18 higher education, student loan servicers, and any other participant in  
19 student education loan lending, with any student loan servicing  
20 concerns; and

21 (8) take any other actions necessary to fulfill the duties of the  
22 Student Loan Ombudsman as set forth in this section.

23 b. No later than October 1, 2019, the Student Loan Ombudsman,  
24 in consultation with the commissioner, shall establish and maintain a  
25 student loan borrower education course that shall include educational  
26 presentations and materials regarding student education loans. The  
27 program shall include, but not be limited to, key loan terms,  
28 documentation requirements, monthly payment obligations, income-  
29 based repayment options, loan forgiveness, and disclosure  
30 requirements.

31 c. No later than January 1, 2019, and annually thereafter, the  
32 commissioner shall submit a report to the standing committees of the  
33 General Assembly and Senate having cognizance of matters relating to  
34 banking and higher education. The commissioner shall report on: (1)  
35 the implementation of this section; (2) the overall effectiveness of the  
36 Student Loan Ombudsman position; and (3) additional steps that need  
37 to be taken for the Department of Banking and Insurance to gain  
38 regulatory control over the licensing and enforcement of student loan  
39 servicers.

40

41 4. a. (1) No person shall act as a student loan servicer, directly or  
42 indirectly, without first obtaining a license from the commissioner  
43 under subsection b. of this section, unless that person is exempt from  
44 licensure pursuant to paragraph (2) of this subsection.

45 (2) The following persons are exempt from subsection a. of this  
46 section: (a) any State or federally chartered bank, savings bank,  
47 savings and loan association, or credit union; (b) any wholly owned  
48 subsidiary of any bank or credit union; and (c) any operating

1 subsidiary where each owner of the operating subsidiary is wholly  
2 owned by the same bank or credit union.

3 b. Any person seeking to act within this State as a student loan  
4 servicer shall make a written application to the commissioner for an  
5 initial license in the form prescribed by the commissioner. The  
6 application shall be accompanied by:

7 (1) a financial statement prepared by a certified public accountant  
8 or a public accountant, the accuracy of which is sworn to under oath  
9 before a notary public by the applicant, proprietor, a general partner or  
10 a corporate officer, or a member duly authorized to execute those  
11 documents;

12 (2) (a) the history of criminal convictions of the: (i) applicant; (ii)  
13 partners, if the applicant is a partnership; (iii) members, if the  
14 applicant is a limited liability company or association; or (iv) officers,  
15 directors and principal employees, if the applicant is a corporation; and

16 (b) sufficient information pertaining to the history of criminal  
17 convictions of that applicant, partners, members, officers, directors or  
18 principal employees as the commissioner deems necessary to make the  
19 findings under subsection c. of this section;

20 (3) a nonrefundable license fee of \$1,000; and

21 (4) a nonrefundable investigation fee of \$800.

22 The commissioner may conduct a State and national criminal  
23 history records check of the applicant and of each partner, member,  
24 officer, director and principal employee of the applicant.

25 c. Upon the filing of an application for an initial license and the  
26 payment of the fees for license and investigation, the commissioner  
27 shall investigate the financial condition and responsibility, financial  
28 and business experience, character and general fitness of the applicant.  
29 The commissioner may issue a license if the commissioner finds that:

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

31 (2) the applicant's business will be conducted honestly, fairly,  
32 equitably, carefully and efficiently within the purposes and intent of  
33 this act, and in a manner commanding the confidence and trust of the  
34 community;

35 (3) (a) if the applicant is an individual, the individual is in all  
36 respects properly qualified and of good character;

37 (b) if the applicant is a partnership, each partner is in all respects  
38 properly qualified and of good character;

39 (c) if the applicant is a corporation or association, the president,  
40 chairperson of the executive committee, senior officer responsible for  
41 the corporation's business and chief financial officer or any other  
42 person who performs similar functions as determined by the  
43 commissioner, each director, each trustee and each shareholder owning  
44 10 percent or more of each class of the securities of the corporation is  
45 in all respects properly qualified and of good character; or

46 (d) if the applicant is a limited liability company, each member is  
47 in all respects properly qualified and of good character;

1 (4) neither the applicant nor any person on behalf of the applicant  
2 knowingly has made any incorrect statement of a material fact in the  
3 application, or in any report or statement made pursuant to this act;

4 (5) neither the applicant nor any person on behalf of the applicant  
5 knowingly has omitted to state any material fact necessary to give the  
6 commissioner any information lawfully required by the commissioner;

7 (6) the applicant has paid the investigation fee and the license fee  
8 required under subsection b. of this section; and

9 (7) the applicant has met any other similar requirements as  
10 determined by the commissioner.

11 d. A license issued pursuant to subsection c. of this section shall  
12 expire at the close of business on September 30 of the odd-numbered  
13 year following its issuance, unless renewed or earlier surrendered,  
14 suspended or revoked pursuant to this act. Not later than 15 days after  
15 a licensee ceases to engage in the business of student loan servicing in  
16 this State for any reason, including a business decision to terminate  
17 operations in this State, license revocation, bankruptcy or voluntary  
18 dissolution, the licensee shall provide written notice of surrender to the  
19 commissioner and shall surrender to the commissioner its license for  
20 each location in which the licensee has ceased to engage in business.  
21 The written notice of surrender shall identify the location where the  
22 records of the licensee will be stored and the name, address and  
23 telephone number of an individual authorized to provide access to the  
24 records. The surrender of a license does not reduce or eliminate the  
25 licensee's civil or criminal liability arising from acts or omissions  
26 occurring prior to the surrender of the license, including any  
27 administrative actions undertaken by the commissioner to revoke or  
28 suspend a license, assess a civil penalty, order restitution or exercise  
29 any other authority provided to the commissioner.

30 e. A license may be renewed for the ensuing 24 month period  
31 upon the filing of an application containing all required documents and  
32 fees as provided in subsection b. of this section. The renewal  
33 application shall be filed on or before September 1 of the year in  
34 which the license expires. Any renewal application filed with the  
35 commissioner after September 1 shall be accompanied by a \$100 late  
36 fee. If an application for a renewal license has been filed with the  
37 commissioner on or before the date the license expires, the license  
38 sought to be renewed shall continue in full force and effect until the  
39 issuance by the commissioner of the renewal license applied for or  
40 until the commissioner has notified the licensee in writing of the  
41 commissioner's refusal to issue the renewal license together with the  
42 grounds upon which that refusal is based. The commissioner may  
43 refuse to issue a renewal license on any ground on which the  
44 commissioner might refuse to issue an initial license.

45 f. The applicant or licensee shall notify the commissioner, in  
46 writing, of any change in the information provided in its initial  
47 application for a license or its most recent renewal application for the  
48 license, as applicable, not later than 10 business days after the

1 occurrence of the event that results in the information becoming  
2 inaccurate.

3 g. The commissioner may deem an application for a license  
4 abandoned if the applicant fails to respond to any request for  
5 information required under this act. The commissioner shall notify the  
6 applicant, in writing, that if the applicant fails to submit any  
7 information not later than 60 days after the date on which the request  
8 for information was made, the application shall be deemed abandoned.  
9 An application filing fee paid prior to the date an application is  
10 deemed abandoned pursuant to this subsection shall not be refunded.  
11 Abandonment of an application pursuant to this subsection shall not  
12 preclude the applicant from submitting a new application for a license  
13 under the provisions of this act.

14

15 5. No person licensed to act within this State as a student loan  
16 servicer shall do so under any other name or at any other place of  
17 business than that named in the license. Any change of location of a  
18 place of business of a licensee shall require prior written notice to  
19 the commissioner. Not more than one place of business shall be  
20 maintained under the same license but the commissioner may issue  
21 more than one license to the same licensee upon compliance with  
22 the provisions of this act as to each new licensee. A license shall  
23 not be transferable or assignable.

24

25 6. a. Each student loan servicer licensee and persons exempt  
26 from licensure pursuant to paragraph (2) of subsection a. of section  
27 4 of this act shall maintain adequate records of each student  
28 education loan transaction for not less than two years following the  
29 final payment on that student education loan or the assignment of  
30 that student education loan, whichever occurs first, or any longer  
31 period as may be required by any other provision of law.

32 b. If requested by the commissioner, each student loan servicer  
33 shall make records available or send records to the commissioner by  
34 registered or certified mail, return receipt requested, or by any  
35 express delivery carrier that provides a dated delivery receipt, not  
36 later than five business days after requested by the commissioner to  
37 do so. Upon request, the commissioner may grant a licensee  
38 additional time to make records available or send the records to the  
39 commissioner.

40

41 7. No student loan servicer shall:

42 a. directly or indirectly employ any scheme, device or artifice  
43 to defraud or mislead student loan borrowers;

44 b. engage in any unfair or deceptive practice toward any person  
45 or misrepresent or omit any material information in connection with  
46 the servicing of a student education loan, including, but not limited  
47 to, misrepresenting the amount, nature or terms of any fee or  
48 payment due or claimed to be due on a student education loan, the



- 1 terms and conditions of the loan agreement or the borrower's  
2 obligations under the loan;
- 3 c. obtain property by fraud or misrepresentation;
- 4 d. knowingly misapply or recklessly apply student education  
5 loan payments to the outstanding balance of a student education  
6 loan;
- 7 e. knowingly or recklessly provide inaccurate information to a  
8 credit bureau, thereby harming a student loan borrower's  
9 creditworthiness;
- 10 f. fail to report both the favorable and unfavorable payment  
11 history of the student loan borrower to a nationally recognized  
12 consumer credit bureau at least annually if the student loan servicer  
13 regularly reports information to a credit bureau;
- 14 g. refuse to communicate with an authorized representative of  
15 the student loan borrower who provides a written authorization  
16 signed by the student loan borrower, provided the student loan  
17 servicer may adopt procedures reasonably related to verifying that  
18 the representative is in fact authorized to act on behalf of the  
19 student loan borrower; or
- 20 h. negligently make any false statement or knowingly and  
21 willfully make any omission of a material fact in connection with  
22 any information or reports filed with a governmental agency or in  
23 connection with any investigation conducted by the commissioner  
24 or another governmental agency.
- 25
- 26 8. a. In addition to any authority provided under Title 17 of the  
27 Revised Statutes, the commissioner shall have the authority to  
28 conduct investigations and examinations as follows:
- 29 (1) For purposes of initial licensing, license renewal, license  
30 suspension, license revocation or termination, or general or specific  
31 inquiry or investigation to determine compliance with this act, the  
32 commissioner may access, receive and use any books, accounts,  
33 records, files, documents, information or evidence including, but  
34 not limited to: (a) criminal, civil and administrative history  
35 information; (b) personal history and experience information,  
36 including independent credit reports obtained from a consumer  
37 reporting agency described in Section 603(p) of the "Fair Credit  
38 Reporting Act" (15 U.S.C. s.1681a); and (c) any other documents,  
39 information or evidence the commissioner deems relevant to the  
40 inquiry or investigation regardless of the location, possession,  
41 control or custody of documents, information or evidence.
- 42 (2) For the purposes of investigating violations or complaints  
43 arising under this act or for the purposes of examination, the  
44 commissioner may review, investigate or examine any student loan  
45 servicer licensee or person subject to this act. The commissioner  
46 may direct, subpoena or order the attendance of and examine under  
47 oath all persons whose testimony may be required about the student  
48 education loan or the business or subject matter of any examination

1 or investigation, and may direct, subpoena or order any person  
2 subject to this act to produce books, accounts, records, files and any  
3 other documents the commissioner deems relevant to the inquiry.

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

20 c. In order to carry out the purposes of this section, the  
21 commissioner may:

22 (1) retain attorneys, accountants or other professionals and  
23 specialists as examiners, auditors or investigators to conduct or  
24 assist in the conduct of examinations or investigations;

25 (2) enter into agreements or relationships with other government  
26 officials or regulatory associations in order to improve efficiencies  
27 and reduce regulatory burden by sharing resources, standardized or  
28 uniform methods or procedures, and documents, records,  
29 information or evidence obtained under this section;

30 (3) use, hire, contract or employ public or privately available  
31 analytical systems, methods or software to examine or investigate  
32 the student loan servicer licensee or any person subject to this act;

33 (4) accept and rely on examination or investigation reports made  
34 by other government officials, within or without this State; and

35 (5) accept audit reports made by an independent certified public  
36 accountant for the student loan servicer licensee or person subject to  
37 this act in the course of that part of the examination covering the  
38 same general subject matter as the audit and may incorporate the  
39 audit report in the report of examination, report of investigation or  
40 other writing of the commissioner.

41 d. The authority of this section shall remain in effect, whether  
42 the student loan servicer licensee or person subject to this act, acts  
43 or claims to act under any licensing or registration law of this State,  
44 or claims to act without that authority.

45 e. No student loan servicer licensee or person subject to  
46 investigation or examination under this section may knowingly  
47 withhold, abstract, remove, mutilate, destroy or secrete any books,  
48 records, computer records or other information.

1       9. a. The commissioner may suspend, revoke or refuse to  
2 renew any license issued under the provisions of subsection c. of  
3 section 4 of this act, or take any other action, if the commissioner  
4 finds that: (1) the licensee has violated any provision of this act or  
5 any regulation made pursuant to this act; or (2) any fact or condition  
6 exists which, if it had existed at the time of the original application  
7 for the license, clearly would have warranted a denial of the license.  
8 No abatement of the license fee shall be made if the license is  
9 surrendered, revoked, or suspended prior to the expiration of the  
10 period for which it was issued.

11       b. (1) Whenever it appears to the commissioner that any  
12 person has violated, is violating or is about to violate any of the  
13 provisions of this act, or any regulation adopted pursuant to this act,  
14 or any licensee or any owner, director, officer, member, partner,  
15 shareholder, trustee, employee or agent of a licensee has committed  
16 any fraud, engaged in dishonest activities or made any  
17 misrepresentation, the commissioner may bring a civil suit in a  
18 court of competent jurisdiction to enjoin the violation or potential  
19 violation, seek civil penalties pursuant to paragraph (2) of this  
20 subsection, or both.

21       (2) Any person who violates any provision of this act shall be  
22 liable, in a civil action brought by the commissioner in a court of  
23 competent jurisdiction, for a penalty of not more than \$5,000 for the  
24 first violation, \$10,000 for the second violation and \$15,000 for  
25 each subsequent violation. The penalty shall be paid to the  
26 commissioner to be used in accordance with this act and shall be  
27 collected pursuant to the "Penalty Enforcement Law of 1999,"  
28 P.L.1999, c.274 (C.2A:58-10 et seq.). The court shall also award  
29 court costs and reasonable attorneys' fees to the commissioner.  
30

31       10. A student loan servicer shall comply with all applicable  
32 federal laws and regulations relating to student loan servicing,  
33 including, but not limited to, the "Truth in Lending Act" (15 U.S.C.  
34 s.1601 et seq.). In addition to any other remedies provided by law,  
35 a violation of any federal law or regulation shall be deemed a  
36 violation of this section and a basis upon which the commissioner  
37 may take enforcement action pursuant to section 9 of this act.  
38

39       11. All costs of the implementation of this act shall be regarded  
40 as administrative costs of the Department of Banking and Insurance.  
41 Moneys collected from license fees, inspections, or violations  
42 pursuant to this act shall be expended by the commissioner for the  
43 purpose of administering the provisions of this act.  
44

45       12. The Commissioner of Banking and Insurance shall, in  
46 accordance with the "Administrative Procedure Act," P.L.1968,  
47 c.410 (C.52:14B-1 et seq.), adopt the rules and regulations  
48 necessary to implement the provisions of this act.



1       Upon the filing of an application for an initial license and the  
2 payment of the fees for license and investigation, the commissioner  
3 will investigate the financial condition and responsibility, financial  
4 and business experience, character and general fitness of the  
5 applicant. The bill provides that licenses expire at the close of  
6 business on September 30 of the odd-numbered year following their  
7 issuance, unless renewed or earlier surrendered, suspended or  
8 revoked. The bill establishes procedures for license renewal and  
9 surrender.

10       The bill requires student loan servicers, and certain other entities  
11 exempt from the other requirements of the bill, to maintain student  
12 loan records for at least two years following final payment or  
13 assignment of the loan. The records are to be provided to the  
14 commissioner for inspection upon request.

15       The bill grants the commissioner the authority to conduct certain  
16 investigations and examinations for purposes of initial licensing,  
17 license renewal, license suspension, license revocation or  
18 termination, or general or specific inquiry or investigation to  
19 determine compliance, in which the commissioner may access,  
20 receive and use any books, accounts, records, files, documents,  
21 information or evidence.

22       The bill also provides that any person who violates any provision  
23 of this act will be liable, in a civil action brought by the  
24 commissioner in a court of competent jurisdiction, for a penalty of  
25 not more than \$5,000 for the first violation, \$10,000 for the second  
26 violation and \$15,000 for each subsequent violation.

# SENATE HIGHER EDUCATION COMMITTEE

## STATEMENT TO

### SENATE, No. 1149

# STATE OF NEW JERSEY

DATED: FEBRUARY 8, 2018

The Senate Higher Education Committee reports favorably Senate Bill No. 1149.

This bill establishes the Office of the Student Loan Ombudsman within the Department of Banking and Insurance (DOBI) and regulates student loan servicers. Under the bill, the ombudsman will, at a minimum:

- (1) receive, review, and attempt to resolve any complaints from student loan borrowers;
- (2) compile and analyze data on student loan borrower complaints;
- (3) assist student loan borrowers to understand their rights and responsibilities;
- (4) provide information and make recommendations to the public, agencies, legislators, and others regarding the problems and concerns of student loan borrowers;
- (5) analyze and monitor the development and implementation of federal, State, and local laws, regulations, and policies relating to student loan borrowers;
- (6) review the complete student education loan history for any student loan borrower who has provided written consent for review; and
- (7) disseminate information concerning the availability of the Student Loan Ombudsman to assist student loan borrowers and potential student loan borrowers.

No later than October 1, 2019, the ombudsman, in consultation with the commissioner, is required to establish and maintain a student loan borrower education course that will include educational presentations and materials regarding student education loans.

Under the bill, student loan servicers are required to obtain a license from the commissioner before directly or indirectly acting as a student loan servicer. State or federally chartered banks, savings banks, savings and loan associations, and credit unions are exempt from the licensure requirement. Any person seeking to act within the State as a student loan servicer must make a written application to the commissioner accompanied by:

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

(2) the history of criminal convictions of the applicant or certain other individuals in the case of certain business entities; and

(3) certain licensure fees.

Upon the filing of an application for an initial license and the payment of the fees for license and investigation, the commissioner will investigate the financial condition and responsibility, financial and business experience, character and general fitness of the applicant. The bill provides that licenses expire at the close of business on September 30 of the odd-numbered year following their issuance, unless renewed or earlier surrendered, suspended or revoked. The bill establishes procedures for license renewal and surrender.

The bill requires student loan servicers, and certain other entities exempt from the other requirements of the bill, to maintain student loan records for at least two years following final payment or assignment of the loan. The records are to be provided to the commissioner for inspection upon request.

The bill grants the commissioner the authority to conduct certain investigations and examinations for purposes of initial licensing, license renewal, license suspension, license revocation or termination, or general or specific inquiry or investigation to determine compliance, in which the commissioner may access, receive and use any books, accounts, records, files, documents, information or evidence.

The bill also provides that any person who violates any provision of this act will be liable, in a civil action brought by the commissioner in a court of competent jurisdiction, for a penalty of not more than \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for each subsequent violation.

# ASSEMBLY HIGHER EDUCATION COMMITTEE

## STATEMENT TO

### **SENATE, No. 1149**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 6, 2019

The Assembly Higher Education Committee reports favorably Senate Bill No. 1149 with committee amendments.

As amended, this bill directs the Commissioner of Banking and Insurance to designate a Student Loan Ombudsman within the Department of Banking and Insurance. The bill also provides for the regulation of student loan servicers.

Under the bill, the ombudsman will, at a minimum:

- (1) receive, review, and attempt to resolve any complaints from student loan borrowers;
- (2) compile and analyze data on student loan borrower complaints;
- (3) assist student loan borrowers to understand their rights and responsibilities;
- (4) provide information and make recommendations to the public, agencies, legislators, and others regarding the problems and concerns of student loan borrowers;
- (5) analyze and monitor the development and implementation of federal, State, and local laws, regulations, and policies relating to student loan borrowers;
- (6) review the complete student education loan history for any student loan borrower who has provided written consent for review; and
- (7) disseminate information concerning the availability of the Student Loan Ombudsman to assist student loan borrowers and potential student loan borrowers.

No later than October 1, 2020, the commissioner is required to ensure the ombudsman and the Higher Education Student Assistance Authority establish and maintain a student loan borrower education course that will include educational presentations and materials regarding student education loans.

Under the bill, student loan servicers are required to obtain a license from the commissioner before directly or indirectly acting as a student loan servicer. State or federally chartered banks, savings banks, savings and loan associations, and credit unions are exempt from the licensure requirement. Any person seeking to act within the State as a student loan servicer must make a written



application to the commissioner utilizing the Nationwide Mortgage Licensing System and Registry accompanied by:

- (1) a financial statement prepared by a certified public accountant or a public accountant;
- (2) the history of criminal convictions of the applicant or certain other individuals in the case of certain business entities; and
- (3) licensure and investigation fees and a fee to be paid to the Nationwide Mortgage Licensing System and Registry.

Upon the filing of an application for an initial license and the payment of the fees for license and investigation, the commissioner will investigate the financial condition and responsibility, financial and business experience, character and general fitness of the applicant. The bill provides that licenses expire at the close of business on December 31 of the year of issuance, unless renewed or earlier surrendered, suspended or revoked. The bill establishes procedures for license renewal and surrender.

The bill provides that the commissioner will automatically issue a limited, irrevocable license to any person servicing a student loan under a contract with the United States Department of Education. That person will be exempt from the required application procedures, other than the payment of the required licensure fee and investigation fee, to the extent the person is servicing federal loans. That person will be considered to have met all of the requirements established under the bill in regard to financial condition and responsibility and general fitness as established under the bill for the servicing of federal loans.

The bill requires student loan servicers, and certain other entities exempt from the other requirements of the bill, to maintain student loan records for at least two years following final payment or assignment of the loan. The records are to be provided to the commissioner for inspection upon request.

The bill grants the commissioner the authority to conduct certain investigations and examinations for purposes of initial licensing, license renewal, license suspension, license revocation or termination, or general or specific inquiry or investigation to determine compliance, in which the commissioner may access, receive and use any books, accounts, records, files, documents, information or evidence.

The bill establishes certain actions that a student loan servicer must take upon an inquiry from a student loan borrower in regard to acknowledging and responding to the inquiry. The bill also establishes required procedures to be followed by a student loan servicer in the event of an overpayment on a student loan, or in the event of the sale, assignment, or transfer of a student education loan.

The bill also provides that any person who violates any of the bill's provision will be liable, in a civil action brought by the

commissioner in a court of competent jurisdiction, for a penalty of not more than \$10,000 for the first violation and \$20,000 for the second and each subsequent violation. In addition, a student loan borrower who suffers any loss of moneys as a result of the use by a student loan servicer of any method, act, or practice declared unlawful under the bill may bring an action in a court of competent jurisdiction. In addition to any other appropriate legal or equitable relief, the court will award the student loan borrower threefold the damages sustained by the borrower, and will also award the borrower reasonable attorneys' fees, filing fees, and reasonable costs of suit.

The bill requires a student loan servicer licensee to annually file a report with the commissioner providing information on the business conducted as a licensee during the preceding calendar year. A student loan servicer licensee must also submit to the Nationwide Mortgage Licensing System and Registry a student loan servicer call report of condition, in the form and manner, and with any information, at any time as may be required by that entity.

As amended and reported by the committee, this bill is identical to Assembly Bill No. 455, which also was amended and reported by the committee on this same date.

#### COMMITTEE AMENDMENTS:

The committee amended the bill to:

- direct the Commissioner of Banking and Insurance to designate a Student Loan Ombudsman within the Department of Banking and Insurance. In its original form, the bill created the Office of the Student Loan Ombudsman in the Department of Banking and Insurance and provided for the appointment of the ombudsman by the Governor;
- specify that the ombudsman will receive and review complaints from student loan borrowers and provide that complaints in regard to student loan servicers will be referred to the commissioner;
- provide that an application made to the commissioner for an initial license as a student loan servicer will utilize the Nationwide Mortgage Licensing System and Registry;
- provide that a license will expire at the close of business on December 31 of the year of its issuance, rather than September 30 of the odd-numbered year following its issuance;
- provide that the commissioner will automatically issue a limited, irrevocable license to any person servicing a student loan under a contract with the United States Department of Education;
- require a student loan servicer to keep on file with the commissioner a minimum surety bond of \$30,000. The

commissioner will determine by regulation who will be eligible to receive protection afforded by the bond and may increase the required bond amount;

- grant the commissioner the authority to conduct certain investigations and examinations for purposes of initial licensing, license renewal, license suspension, license revocation or termination, or general or specific inquiry or investigation to determine compliance, in which the commissioner may access, receive and use any books, accounts, records, files, documents, information or evidence;
- establish procedures to be followed by a student loan servicer upon receipt of an inquiry from a student loan borrower, upon receipt of an overpayment on a student education loan, and in the event of the sale, assignment or other transfer of the servicing of a student education loan that results in a change in the identity of the person to whom payment is made;
- provide that any person who violates any provision of the bill will be liable, in a civil action brought by the commissioner in a court of competent jurisdiction, for a penalty of not more than \$10,000 for the first violation and \$20,000 for the second and each subsequent violation;
- provide that a student loan borrower who suffers any loss of moneys as a result of the use by a student loan servicer of any method, act, or practice declared unlawful under the bill may bring an action in a court of competent jurisdiction. The court may award threefold the damages sustained by the borrower and will also award fees and filing costs;
- require a student loan servicer licensee to annually file a report with the commissioner providing information on the business conducted as a licensee during the preceding calendar year. The student loan servicer must submit to the Nationwide Mortgage Licensing System and Registry a student loan service call report; and
- provide for an annual assessment on student loan servicers sufficient to cover the annual cost of the bill's implementation.

**LEGISLATIVE FISCAL ESTIMATE**  
**SENATE, No. 1149**  
**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

DATED: MARCH 28, 2018

**SUMMARY**

**Synopsis:** Establishes Office of Student Loan Ombudsman; regulates student loan servicers.

**Type of Impact:** Indeterminate increase in State expenditures, partially if not fully offset by an indeterminate increase in revenue; General Fund

**Agencies Affected:** Department of Banking and Insurance

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Annual</u></b>
<b>State Cost</b>	Indeterminate
<b>State Revenue</b>	Indeterminate

- The Office of Legislative Services (OLS) estimates that the bill may result in an indeterminate increase in expenditures from the General Fund due to administrative costs incurred by the Department of Banking and Insurance (DOBI) in establishing and maintaining the Office of the Student Loan Ombudsman and regulating certain student loan servicers.
- The OLS further estimates that the enactment of this bill may result in an indeterminate increase in revenue to the General Fund due to the collection of license fees, investigation fees, and penalties resulting from violations of the provisions of the bill. Under the bill, such revenue is to be expended on the administrative costs of the bill. Any marginal costs not covered by the increase in revenue can be charged back to the industry through the special needs assessment in DOBI.
- The OLS notes that, pursuant to the special needs assessment of DOBI, the bill may also result in an indeterminate increase in revenue due to a potential assessment on student loan servicers who obtain a license from the commissioner.

**BILL DESCRIPTION**

This bill establishes the Office of the Student Loan Ombudsman within the DOBI and regulates student loan servicers. Under the bill, the ombudsman will:

- (1) receive, review, and attempt to resolve any complaints from student loan borrowers;
- (2) compile and analyze data on student loan borrower complaints;
- (3) assist student loan borrowers to understand their rights and responsibilities;
- (4) provide information and make recommendations to the public, agencies, legislators, and others regarding the problems and concerns of student loan borrowers;
- (5) analyze and monitor the development and implementation of federal, State, and local laws, regulations, and policies relating to student loan borrowers;
- (6) review the complete student education loan history for any student loan borrower who has provided written consent for review; and
- (7) disseminate information concerning the availability of the Student Loan Ombudsman to assist student loan borrowers and potential student loan borrowers.

No later than October 1, 2019, the ombudsman, in consultation with the Commissioner of Banking and Insurance, is required to establish and maintain a student loan borrower education course that will include educational presentations and materials regarding student education loans.

Under the bill, student loan servicers are required to obtain a license from the commissioner before directly or indirectly acting as a student loan servicer. State or federally chartered banks, savings banks, savings and loan associations, and credit unions are exempt from the licensure requirement. Any person seeking to act within the State as a student loan servicer must make a written application to the commissioner accompanied by:

- (1) a financial statement prepared by a certified public accountant or a public accountant;
- (2) the history of criminal convictions of the applicant or certain other individuals in the case of certain business entities; and
- (3) certain licensure fees.

Upon the filing of an application for an initial license and the payment of the fees for license and investigation, the commissioner will investigate the financial condition and responsibility, financial and business experience, character and general fitness of the applicant. The bill provides that licenses expire at the close of business on September 30 of the odd-numbered year following their issuance, unless renewed or earlier surrendered, suspended or revoked. The bill establishes procedures for license renewal and surrender.

The bill requires student loan servicers, and certain other entities exempt from the other requirements of the bill, to maintain student loan records for at least two years following final payment or assignment of the loan. The records are to be provided to the commissioner for inspection upon request.

The bill grants the commissioner the authority to conduct certain investigations and examinations for purposes of initial licensing, license renewal, license suspension, license revocation or termination, or general or specific inquiry or investigation to determine compliance, in which the commissioner may access, receive and use any books, accounts, records, files, documents, information or evidence.

The bill also provides that any person who violates any of its provisions will be liable, in a civil action brought by the commissioner in a court of competent jurisdiction, for a penalty of not more than \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for each subsequent violation.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

**OFFICE OF LEGISLATIVE SERVICES**

This bill was modeled after Connecticut Substitute House Bill No. 6915 of 2015, which was enacted in July 2015. The actual cost of that bill as enacted is unknown. However, according to the Connecticut Office of Fiscal Analysis, the total FY 2017 cost of the bill was estimated to be \$198,957, with \$25,000 anticipated for the course development and the remaining expenditures associated with the ombudsman's salary and fringe benefits. The Office of Fiscal Analysis did not anticipate a fiscal impact resulting from the additional licensure and enforcement responsibilities of the state's Banking Department. Furthermore, the Office of Fiscal Analysis expected that 20 to 50 student loan servicers would be subject to the licensure requirements of the bill, providing a revenue range in FY 2017 from \$36,000 to \$90,000 from the biennial licensure (\$1,000) and initial investigation (\$800) fees provided under the bill.

Using this analysis, the maximum revenue estimated to be generated by the Connecticut bill is \$108,957 short of the total estimated expenditures of the bill for FY 2017. The OLS notes that this analysis does not include any estimated revenue generated from violations of the provisions of the bill. The OLS further notes the anticipated \$25,000 expense associated with the course development is assumed to be isolated to FY 2017, and therefore not an annual expense.

Furthermore, the Department of Legislative Services of the Maryland General Assembly recently reported a Fiscal and Policy Note on House Bill No. 1642, which has a similar legislative structure to Connecticut's bill. Under the analysis, General Fund revenues would increase by approximately \$63,000 in FY 2019 for initial licensure and \$63,000 in FY2020 to begin the biennial licensing cycle. The Department of Legislative Services also estimated a likely minimal increase in revenues as a result of the bill's penalty provisions. Lastly, under the analysis, General Fund expenditures would increase by \$156,700 in FY 2019 and \$196,400 in FY 2020 for additional personnel.

Using this analysis, and assuming that the revenue estimated by the bill's penalty provisions is minimal, if any, the maximum revenue estimated to be generated by the Maryland bill is \$93,700 short of the total estimated expenditures of the bill for FY 2019 and \$133,400 for FY 2020.

The OLS estimates that the bill may result in an indeterminate increase in expenditures from the General Fund due to administrative costs incurred by the DOBI in establishing and maintaining the Office of the Student Loan Ombudsman and regulating certain student loan servicers. The OLS further estimates that the enactment of this bill may result in an indeterminate increase in revenue to the General Fund due to the collection of license fees, investigation fees, and penalties resulting from violations of the provisions of the bill. Under the bill, such revenue is to be expended on the administrative costs of the bill.

Under the bill, the Department of Banking and Insurance may incur an initial one-time expense to establish a student loan borrower education course. Furthermore, annual costs may result from: a) any salary and fringe benefits associated with the staff of the Office of the Student Loan Ombudsman; b) any other administrative expenses associated with the Office of the Student Loan Ombudsman; c) promotion, implementation, and review of the student loan borrower education course; and d) the additional licensure and enforcement responsibilities associated with regulating student loan servicers.

The bill provides that all revenue generated from fees and violations, as established by the bill, is to be expended for the administrative costs associated with the bill. However, it is unclear how many student loan servicers would be subject to the licensure requirements of the bill and how many infractions those servicers may commit on an annual basis. As such, the OLS has insufficient information with which to estimate the total amount of revenue generated under the bill. Unlike the Connecticut and Maryland analyses for which the amount of revenues estimated

would not prove sufficient to offset the total expenses estimated, the OLS notes that any marginal costs not covered by the increase in revenue realized under the bill can be charged back to the industry through the dedicated assessment funding mechanism for the special needs of the Division of Banking. The Division of Banking imposes two assessments on financial entities on or around October 1 of each year for the division's special needs; a Banking Licensing Assessment and a Banking Depositor Assessment (N.J.S.A.17:1C-33 et seq.). These assessments are based on calendar year business for each company and fiscal year expenditures incurred by or on behalf of the Division of Banking, as certified by the Director of the Division of Budget and Accounting in the Department of the Treasury. These certified expenses include, in addition to the direct costs of personal service, the costs of maintenance and operation, the costs of employee benefits and workers' compensation, rentals for space occupied in State-owned or State-leased buildings and all other direct and indirect costs of the administration of those functions, as well as any amounts remaining uncollected from the assessment of the previous fiscal year (N.J.S.A.17:1C-35).

The OLS notes that the licensure fees under the bill are collected on a biennial basis and expire at the close of business on September 30 of the odd numbered year following the issuance of the license. Therefore, after the initial collection of such fees following enactment, it is likely that revenue will be greater during odd numbered years.

The OLS furthermore notes that, according to the special needs assessment of the Division of Banking, the bill may also result in an indeterminate increase in revenue due to a potential assessment on student loan servicers who obtain a license from the commissioner.

*Section: Commerce, Labor and Industry*  
*Analyst: Juan C. Rodriguez*  
*Associate Fiscal Analyst*  
*Approved: Frank W. Haines III*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## SENATE, No. 1149 STATE OF NEW JERSEY 218th LEGISLATURE

DATED: JULY 17, 2019

### SUMMARY

- Synopsis:** Provides for appointment of Student Loan Ombudsman and regulates student loan servicers.
- Type of Impact:** Annual increases in State expenditures and revenue; General Fund.
- Agencies Affected:** Department of Banking and Insurance; Higher Education Student Assistance Authority; the Judiciary.

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Annual</u></b>
<b>State Expenditure Increase</b>	Indeterminate
<b>State Revenue Increase</b>	Indeterminate

- The Office of Legislative Services (OLS) estimates that the bill will result in an indeterminate increase in annual State expenditures. The Department of Banking and Insurance (DOBI) will incur an indeterminate increase in annual administrative expenditures in regulating certain student loan servicers; enforcing the provisions of this bill; establishing the position of the Student Loan Ombudsman; and providing staff support to the ombudsman. In addition, DOBI and the Higher Education Student Assistance Authority will incur indeterminate one-time expenses to develop a student loan borrower education course and periodic expenses to maintain the course. The Judiciary may also incur additional expenditures insofar as the provisions of the bill will give rise to litigation that otherwise would not occur.
- The OLS anticipates that this bill will cause an indeterminate increase in annual State revenue from student loan servicer assessments, license fees, investigation fees, and penalties resulting from violations of the provisions of the bill. The revenues are to defray the administrative expenses the State will incur as a result of the legislation.



## **BILL DESCRIPTION**

This bill provides for the licensure and regulation of student loan servicers by DOBI and the designation within that department of a Student Loan Ombudsman.

The ombudsman will, at a minimum:

- (1) receive, review, and attempt to resolve any complaints from student loan borrowers;
- (2) compile and analyze data on student loan borrower complaints;
- (3) assist student loan borrowers to understand their rights and responsibilities;
- (4) provide information and make recommendations to the public, agencies, legislators, and others regarding the problems and concerns of student loan borrowers;
- (5) analyze and monitor the development and implementation of federal, State, and local laws, regulations, and policies relating to student loan borrowers;
- (6) review the complete student education loan history for any student loan borrower who has provided written consent for review;
- (7) disseminate information concerning the availability of the Student Loan Ombudsman to assist student loan borrowers and potential student loan borrowers; and
- (8) establish by October 1, 2020 and maintain a student loan borrower education course in collaboration with the Higher Education Student Assistance Authority.

Under the bill, student loan servicers are required to obtain an annual license from DOBI before directly or indirectly acting as a student loan servicer. State or federally chartered banks, savings banks, savings and loan associations, and credit unions are exempt from the licensure requirement. The annual license fee equals \$5,000. Applicants must also pay an investigation fee in such an amount as the department determines before DOBI will investigate the financial condition and responsibility, financial and business experience, character and general fitness of the applicant.

The bill provides that DOBI will automatically issue a limited, irrevocable license to any person servicing a student loan under a contract with the United States Department of Education. That person will be exempt from the required application procedures, other than the payment of the required licensure fee and investigation fee, to the extent the person is servicing federal loans.

The bill grants DOBI the authority to conduct certain investigations and examinations for purposes of initial licensing, license renewal, license suspension, license revocation or termination, or general or specific inquiry or investigation to determine compliance.

A student loan servicer must keep on file with DOBI a minimum surety bond of \$30,000. The department will determine who will be eligible to receive protection afforded by the bond and may increase the required bond amount.

Anyone who violates any of the bill's provisions will be liable, in a civil action brought by DOBI in a court of competent jurisdiction, for a penalty of not more than \$10,000 for the first violation and \$20,000 for each subsequent violation. In addition, a student loan borrower who suffers any loss of moneys as a result of a student loan servicer's unlawful practice may bring an action in a court of competent jurisdiction.

The bill requires a student loan servicer licensee to annually file a report with DOBI on the business conducted as a licensee. The failure to file the annual report as required by DOBI will be subject to a penalty in an amount not to exceed \$100 per day of violation.

Lastly, in addition to moneys collected from license and inspection fees and penalties, the bill provides for an annual assessment on student loan servicers sufficient to cover the State's annual cost of implementing the provisions of the bill.

## FISCAL ANALYSIS

### *EXECUTIVE BRANCH*

None received.

### *OFFICE OF LEGISLATIVE SERVICES*

The OLS anticipates that the bill will result in indeterminate annual expenditure and revenue increases to the State General Fund.

Expenditure Increases: DOBI will incur an indeterminate increase in annual administrative expenditures in regulating certain student loan servicers; enforcing the provisions of this bill; establishing the position of the Student Loan Ombudsman; and providing staff support to the ombudsman. In addition, DOBI and the Higher Education Student Assistance Authority will incur indeterminate one-time expenses to develop a student loan borrower education course and periodic expenses to maintain the course. The Judiciary may also incur additional expenditures insofar as the provisions of the bill will give rise to litigation that otherwise would not occur.

Although the OLS has not received any information concerning the manner in which DOBI and the Higher Education Student Assistance Authority would implement the responsibilities established by the legislation, legislative fiscal offices in Connecticut and Maryland have estimated the cost of similar legislation in their respective states. The estimates may serve as points of reference in assessing the State expenditure increase the bill may cause.

This bill was modeled after Connecticut Substitute House Bill No. 6915 of 2015. The Connecticut Office of Fiscal Analysis estimated the total FY 2017 cost of the bill to be \$198,957, composed of \$95,095 for the ombudsman's salary, \$78,862 for fringe benefits, and \$25,000 for the development of the student loan borrower education course. The Office of Fiscal Analysis did not anticipate a fiscal impact resulting from the additional licensure and enforcement responsibilities of the state's Banking Department. The OLS notes the anticipated \$25,000 expense associated with the course development was assumed to be a one-time expense.

Furthermore, the Department of Legislative Services of the Maryland General Assembly published a Fiscal and Policy Note on House Bill No. 1642 of 2018, which has a similar structure to Connecticut's bill. The document indicates that the Maryland Office of the Commissioner of Financial Regulation anticipated adding two positions to implement the legislation. In all, General Fund expenditures would increase by \$196,400 in FY 2020.

Revenue Increase: The OLS estimates that this bill will cause an indeterminate increase in annual State General Fund revenue from student loan servicer assessments, license fees, investigation fees, and penalties resulting from violations of the provisions of the bill.

The bill provides that all revenue generated from fees and violations is to be expended for the administrative costs associated with the bill. However, it is unclear how many student loan servicers would be subject to the licensure requirements and how many infractions those servicers may commit. As such, the OLS has insufficient information with which to estimate the total amount of fee and penalty revenue the bill will generate.

The OLS notes, however, that Connecticut has enacted Substitute House Bill No. 6915 of 2015, which instituted a licensure requirement for student loan servicers. According to the Connecticut Department of Banking, as of June 1, 2019, there were 49 active student loan servicer licensees in Connecticut. At the bill's \$5,000 annual license fee, if 49 student loan servicer licenses were issued in New Jersey, DOBI would collect \$245,000 per year. To that amount would have to be added collections from the investigation fees. Given that the bill grants

DOBI substantial discretion in the setting of the fee, the OLS cannot forecast the fee amount and hence total investigation fee collections.

In addition, DOBI will be authorized to impose an annual assessment on student loan servicer licensees in an amount sufficient to cover the annual cost of implementing the bill. Considering the aforementioned uncertainty regarding the cost of the bill and the amount of fees and penalties that will be collected, the OLS cannot determine whether an assessment will become necessary, and, if so, at what rate.

*Section: Commerce, Labor and Industry*

*Analyst: Juan C. Rodriguez  
Associate Fiscal Analyst*

*Approved: Frank W. Haines III  
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

**ASSEMBLY, No. 455**

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**STATE OF NEW JERSEY**

**218th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

**Assemblyman GARY S. SCHAER**

**District 36 (Bergen and Passaic)**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**Assemblyman JAMEL C. HOLLEY**

**District 20 (Union)**

**Assemblyman JOE DANIELSEN**

**District 17 (Middlesex and Somerset)**

**Co-Sponsored by:**

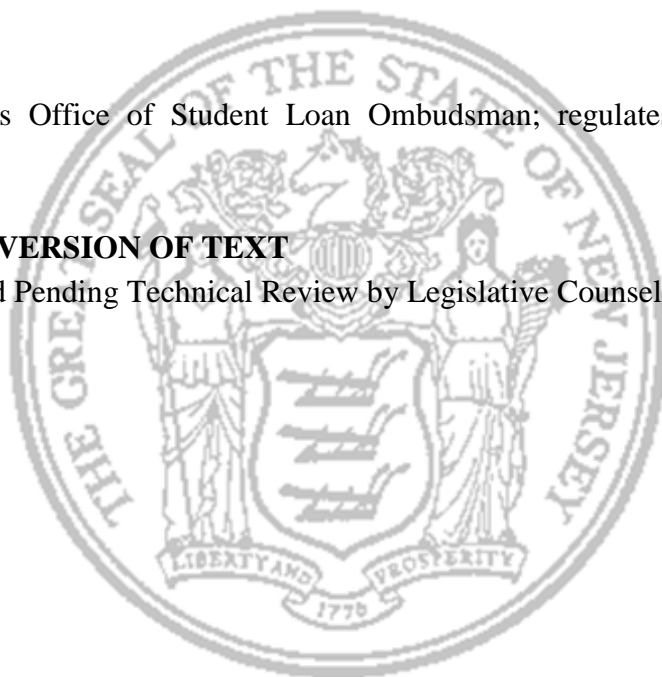
**Assemblywomen Mosquera, Pinkin, Assemblymen Eustace, Mazzeo, Chiaravalloti, Assemblywomen Lampitt, Muoio, Assemblymen Calabrese, Giblin, Assemblywomen Chaparro, Jasey and Murphy**

**SYNOPSIS**

Establishes Office of Student Loan Ombudsman; regulates student loan servicers.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 12/4/2018)**

1 AN ACT establishing the Office of the Student Loan Ombudsman  
2 and regulating student loan servicers and supplementing Title 17  
3 of the Revised Statutes.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. As used in this act:

9 "Commissioner" means the Commissioner of Banking and  
10 Insurance.

11 "Ombudsman" means the Student Loan Ombudsman appointed  
12 pursuant to section 2 of this act.

13 "Servicing" means: (1) receiving any scheduled periodic  
14 payments from a student loan borrower pursuant to the terms of a  
15 student education loan; (2) applying the payments of principal and  
16 interest and other payments with respect to the amounts received  
17 from a student loan borrower, as may be required pursuant to the  
18 terms of a student education loan; and (3) performing other  
19 administrative services with respect to a student education loan.

20 "Student education loan" means any loan primarily for personal  
21 use to finance education or other school-related expenses.

22 "Student loan borrower" means any resident of this State who  
23 has received or agreed to pay a student education loan; or any  
24 person who shares responsibility with a resident for repaying a  
25 student education loan.

26 "Student loan servicer" means any person, wherever located,  
27 responsible for the servicing of any student education loan to any  
28 student loan borrower.  
29

30 2. There is created within the Department of Banking and  
31 Insurance the Office of the Student Loan Ombudsman. The  
32 ombudsman shall be appointed by the Governor with the advice and  
33 consent of the Senate and shall serve at the pleasure of the  
34 Governor during the Governor's term of office. The ombudsman  
35 shall not hold any other office, position, or employment outside of  
36 the position of ombudsman. Any vacancy occurring in the position  
37 of ombudsman shall be filled in the same manner as the original  
38 appointment. If the ombudsman shall be unable for any reason to  
39 serve the full term of office, the Governor may designate an acting  
40 ombudsman until a successor is appointed and qualified.  
41

42 3. a. The ombudsman shall:

43 (1) receive, review, and attempt to resolve any complaints from  
44 student education loan borrowers, including, but not limited to,  
45 attempts to resolve those complaints in collaboration with  
46 institutions of higher education, student loan servicers, and any  
47 other participants in student education loan lending;

- 1 (2) compile and analyze data on student loan borrower  
2 complaints as described in paragraph (1) of this subsection;
- 3 (3) assist student loan borrowers to understand their rights and  
4 responsibilities under the terms of student education loans;
- 5 (4) provide information to the public, agencies, legislators, and  
6 others regarding the problems and concerns of student loan  
7 borrowers, and make recommendations for resolving those  
8 problems and concerns;
- 9 (5) analyze and monitor the development and implementation of  
10 federal, State, and local laws, regulations, and policies relating to  
11 student loan borrowers and recommend any changes the Student  
12 Loan Ombudsman deems necessary;
- 13 (6) review the complete student education loan history for any  
14 student loan borrower who has provided written consent for review;
- 15 (7) disseminate information concerning the availability of the  
16 Student Loan Ombudsman to assist student loan borrowers and  
17 potential student loan borrowers, as well as public institutions of  
18 higher education, student loan servicers, and any other participant  
19 in student education loan lending, with any student loan servicing  
20 concerns; and
- 21 (8) take any other actions necessary to fulfill the duties of the  
22 Student Loan Ombudsman as set forth in this section.
- 23 b. No later than October 1, 2018, the Student Loan  
24 Ombudsman, in consultation with the commissioner, shall establish  
25 and maintain a student loan borrower education course that shall  
26 include educational presentations and materials regarding student  
27 education loans. The program shall include, but not be limited to,  
28 key loan terms, documentation requirements, monthly payment  
29 obligations, income-based repayment options, loan forgiveness, and  
30 disclosure requirements.
- 31 c. No later than January 1, 2018, and annually thereafter, the  
32 commissioner shall submit a report to the standing committees of  
33 the General Assembly and Senate having cognizance of matters  
34 relating to banking and higher education. The commissioner shall  
35 report on: (1) the implementation of this section; (2) the overall  
36 effectiveness of the Student Loan Ombudsman position; and (3)  
37 additional steps that need to be taken for the Department of Banking  
38 and Insurance to gain regulatory control over the licensing and  
39 enforcement of student loan servicers.
- 40
- 41 4. a. (1) No person shall act as a student loan servicer, directly  
42 or indirectly, without first obtaining a license from the  
43 commissioner under subsection b. of this section, unless that person  
44 is exempt from licensure pursuant to paragraph (2) of this  
45 subsection.
- 46 (2) The following persons are exempt from subsection a. of this  
47 section: (a) any State or federally chartered bank, savings bank,  
48 savings and loan association, or credit union; (b) any wholly owned

1 subsidiary of any bank or credit union; and (c) any operating  
2 subsidiary where each owner of the operating subsidiary is wholly  
3 owned by the same bank or credit union.

4 b. Any person seeking to act within this State as a student loan  
5 servicer shall make a written application to the commissioner for an  
6 initial license in the form prescribed by the commissioner. The  
7 application shall be accompanied by:

8 (1) a financial statement prepared by a certified public  
9 accountant or a public accountant, the accuracy of which is sworn  
10 to under oath before a notary public by the applicant, proprietor, a  
11 general partner or a corporate officer, or a member duly authorized  
12 to execute those documents;

13 (2) (a) the history of criminal convictions of the: (i) applicant;  
14 (ii) partners, if the applicant is a partnership; (iii) members, if the  
15 applicant is a limited liability company or association; or (iv)  
16 officers, directors and principal employees, if the applicant is a  
17 corporation; and

18 (b) sufficient information pertaining to the history of criminal  
19 convictions of that applicant, partners, members, officers, directors  
20 or principal employees as the commissioner deems necessary to  
21 make the findings under subsection c. of this section;

22 (3) a nonrefundable license fee of \$1,000; and

23 (4) a nonrefundable investigation fee of \$800.

24 The commissioner may conduct a State and national criminal  
25 history records check of the applicant and of each partner, member,  
26 officer, director and principal employee of the applicant.

27 c. Upon the filing of an application for an initial license and  
28 the payment of the fees for license and investigation, the  
29 commissioner shall investigate the financial condition and  
30 responsibility, financial and business experience, character and  
31 general fitness of the applicant. The commissioner may issue a  
32 license if the commissioner finds that:

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

34 (2) the applicant's business will be conducted honestly, fairly,  
35 equitably, carefully and efficiently within the purposes and intent of  
36 this act, and in a manner commanding the confidence and trust of  
37 the community;

38 (3) (a) if the applicant is an individual, the individual is in all  
39 respects properly qualified and of good character;

40 (b) if the applicant is a partnership, each partner is in all  
41 respects properly qualified and of good character;

42 (c) if the applicant is a corporation or association, the president,  
43 chairperson of the executive committee, senior officer responsible  
44 for the corporation's business and chief financial officer or any  
45 other person who performs similar functions as determined by the  
46 commissioner, each director, each trustee and each shareholder  
47 owning 10 percent or more of each class of the securities of the

1 corporation is in all respects properly qualified and of good  
2 character; or

3 (d) if the applicant is a limited liability company, each member  
4 is in all respects properly qualified and of good character;

5 (4) neither the applicant nor any person on behalf of the  
6 applicant knowingly has made any incorrect statement of a material  
7 fact in the application, or in any report or statement made pursuant  
8 to this act;

9 (5) neither the applicant nor any person on behalf of the  
10 applicant knowingly has omitted to state any material fact necessary  
11 to give the commissioner any information lawfully required by the  
12 commissioner;

13 (6) the applicant has paid the investigation fee and the license  
14 fee required under subsection b. of this section; and

15 (7) the applicant has met any other similar requirements as  
16 determined by the commissioner.

17 d. A license issued pursuant to subsection c. of this section  
18 shall expire at the close of business on September 30 of the odd-  
19 numbered year following its issuance, unless renewed or earlier  
20 surrendered, suspended or revoked pursuant to this act. Not later  
21 than 15 days after a licensee ceases to engage in the business of  
22 student loan servicing in this State for any reason, including a  
23 business decision to terminate operations in this State, license  
24 revocation, bankruptcy or voluntary dissolution, the licensee shall  
25 provide written notice of surrender to the commissioner and shall  
26 surrender to the commissioner its license for each location in which  
27 the licensee has ceased to engage in business. The written notice of  
28 surrender shall identify the location where the records of the  
29 licensee will be stored and the name, address and telephone number  
30 of an individual authorized to provide access to the records. The  
31 surrender of a license does not reduce or eliminate the licensee's  
32 civil or criminal liability arising from acts or omissions occurring  
33 prior to the surrender of the license, including any administrative  
34 actions undertaken by the commissioner to revoke or suspend a  
35 license, assess a civil penalty, order restitution or exercise any other  
36 authority provided to the commissioner.

37 e. A license may be renewed for the ensuing 24 month period  
38 upon the filing of an application containing all required documents  
39 and fees as provided in subsection b. of this section. The renewal  
40 application shall be filed on or before September 1 of the year in  
41 which the license expires. Any renewal application filed with the  
42 commissioner after September 1 shall be accompanied by a \$100  
43 late fee. If an application for a renewal license has been filed with  
44 the commissioner on or before the date the license expires, the  
45 license sought to be renewed shall continue in full force and effect  
46 until the issuance by the commissioner of the renewal license  
47 applied for or until the commissioner has notified the licensee in  
48 writing of the commissioner's refusal to issue the renewal license



1 together with the grounds upon which that refusal is based. The  
2 commissioner may refuse to issue a renewal license on any ground  
3 on which the commissioner might refuse to issue an initial license.

4 f. The applicant or licensee shall notify the commissioner, in  
5 writing, of any change in the information provided in its initial  
6 application for a license or its most recent renewal application for  
7 the license, as applicable, not later than 10 business days after the  
8 occurrence of the event that results in the information becoming  
9 inaccurate.

10 g. The commissioner may deem an application for a license  
11 abandoned if the applicant fails to respond to any request for  
12 information required under this act. The commissioner shall notify  
13 the applicant, in writing, that if the applicant fails to submit any  
14 information not later than 60 days after the date on which the  
15 request for information was made, the application shall be deemed  
16 abandoned. An application filing fee paid prior to the date an  
17 application is deemed abandoned pursuant to this subsection shall  
18 not be refunded. Abandonment of an application pursuant to this  
19 subsection shall not preclude the applicant from submitting a new  
20 application for a license under the provisions of this act.

21

22 5. No person licensed to act within this State as a student loan  
23 servicer shall do so under any other name or at any other place of  
24 business than that named in the license. Any change of location of a  
25 place of business of a licensee shall require prior written notice to  
26 the commissioner. Not more than one place of business shall be  
27 maintained under the same license but the commissioner may issue  
28 more than one license to the same licensee upon compliance with  
29 the provisions of this act as to each new licensee. A license shall  
30 not be transferable or assignable.

31

32 6. a. Each student loan servicer licensee and persons exempt  
33 from licensure pursuant to paragraph (2) of subsection a. of section  
34 4 of this act shall maintain adequate records of each student  
35 education loan transaction for not less than two years following the  
36 final payment on that student education loan or the assignment of  
37 that student education loan, whichever occurs first, or any longer  
38 period as may be required by any other provision of law.

39 b. If requested by the commissioner, each student loan servicer  
40 shall make records available or send records to the commissioner by  
41 registered or certified mail, return receipt requested, or by any  
42 express delivery carrier that provides a dated delivery receipt, not  
43 later than five business days after requested by the commissioner to  
44 do so. Upon request, the commissioner may grant a licensee  
45 additional time to make records available or send the records to the  
46 commissioner.

47

48 7. No student loan servicer shall:

- 1 a. directly or indirectly employ any scheme, device or artifice
- 2 to defraud or mislead student loan borrowers;
- 3 b. engage in any unfair or deceptive practice toward any person
- 4 or misrepresent or omit any material information in connection with
- 5 the servicing of a student education loan, including, but not limited
- 6 to, misrepresenting the amount, nature or terms of any fee or
- 7 payment due or claimed to be due on a student education loan, the
- 8 terms and conditions of the loan agreement or the borrower's
- 9 obligations under the loan;
- 10 c. obtain property by fraud or misrepresentation;
- 11 d. knowingly misapply or recklessly apply student education
- 12 loan payments to the outstanding balance of a student education
- 13 loan;
- 14 e. knowingly or recklessly provide inaccurate information to a
- 15 credit bureau, thereby harming a student loan borrower's
- 16 creditworthiness;
- 17 f. fail to report both the favorable and unfavorable payment
- 18 history of the student loan borrower to a nationally recognized
- 19 consumer credit bureau at least annually if the student loan servicer
- 20 regularly reports information to a credit bureau;
- 21 g. refuse to communicate with an authorized representative of
- 22 the student loan borrower who provides a written authorization
- 23 signed by the student loan borrower, provided the student loan
- 24 servicer may adopt procedures reasonably related to verifying that
- 25 the representative is in fact authorized to act on behalf of the
- 26 student loan borrower; or
- 27 h. negligently make any false statement or knowingly and
- 28 willfully make any omission of a material fact in connection with
- 29 any information or reports filed with a governmental agency or in
- 30 connection with any investigation conducted by the commissioner
- 31 or another governmental agency.
- 32
- 33 8. a. In addition to any authority provided under Title 17 of the
- 34 Revised Statutes, the commissioner shall have the authority to
- 35 conduct investigations and examinations as follows:
- 36 (1) For purposes of initial licensing, license renewal, license
- 37 suspension, license revocation or termination, or general or specific
- 38 inquiry or investigation to determine compliance with this act, the
- 39 commissioner may access, receive and use any books, accounts,
- 40 records, files, documents, information or evidence including, but
- 41 not limited to: (a) criminal, civil and administrative history
- 42 information; (b) personal history and experience information,
- 43 including independent credit reports obtained from a consumer
- 44 reporting agency described in Section 603(p) of the "Fair Credit
- 45 Reporting Act" (15 U.S.C. s.1681a); and (c) any other documents,
- 46 information or evidence the commissioner deems relevant to the
- 47 inquiry or investigation regardless of the location, possession,
- 48 control or custody of documents, information or evidence.

1       (2) For the purposes of investigating violations or complaints  
2 arising under this act or for the purposes of examination, the  
3 commissioner may review, investigate or examine any student loan  
4 servicer licensee or person subject to this act. The commissioner  
5 may direct, subpoena or order the attendance of and examine under  
6 oath all persons whose testimony may be required about the student  
7 education loan or the business or subject matter of any examination  
8 or investigation, and may direct, subpoena or order any person  
9 subject to this act to produce books, accounts, records, files and any  
10 other documents the commissioner deems relevant to the inquiry.

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

27       c. In order to carry out the purposes of this section, the  
28 commissioner may:

29       (1) retain attorneys, accountants or other professionals and  
30 specialists as examiners, auditors or investigators to conduct or  
31 assist in the conduct of examinations or investigations;

32       (2) enter into agreements or relationships with other government  
33 officials or regulatory associations in order to improve efficiencies  
34 and reduce regulatory burden by sharing resources, standardized or  
35 uniform methods or procedures, and documents, records,  
36 information or evidence obtained under this section;

37       (3) use, hire, contract or employ public or privately available  
38 analytical systems, methods or software to examine or investigate  
39 the student loan servicer licensee or any person subject to this act;

40       (4) accept and rely on examination or investigation reports made  
41 by other government officials, within or without this State; and

42       (5) accept audit reports made by an independent certified public  
43 accountant for the student loan servicer licensee or person subject to  
44 this act in the course of that part of the examination covering the  
45 same general subject matter as the audit and may incorporate the  
46 audit report in the report of examination, report of investigation or  
47 other writing of the commissioner.

1 d. The authority of this section shall remain in effect, whether  
2 the student loan servicer licensee or person subject to this act, acts  
3 or claims to act under any licensing or registration law of this State,  
4 or claims to act without that authority.

5 e. No student loan servicer licensee or person subject to  
6 investigation or examination under this section may knowingly  
7 withhold, abstract, remove, mutilate, destroy or secrete any books,  
8 records, computer records or other information.

9  
10 9. a. The commissioner may suspend, revoke or refuse to  
11 renew any license issued under the provisions of subsection c. of  
12 section 4 of this act, or take any other action, if the commissioner  
13 finds that: (1) the licensee has violated any provision of this act or  
14 any regulation made pursuant to this act; or (2) any fact or condition  
15 exists which, if it had existed at the time of the original application  
16 for the license, clearly would have warranted a denial of the license.  
17 No abatement of the license fee shall be made if the license is  
18 surrendered, revoked, or suspended prior to the expiration of the  
19 period for which it was issued.

20 b. (1) Whenever it appears to the commissioner that any person  
21 has violated, is violating or is about to violate any of the provisions  
22 of this act, or any regulation adopted pursuant to this act, or any  
23 licensee or any owner, director, officer, member, partner,  
24 shareholder, trustee, employee or agent of a licensee has committed  
25 any fraud, engaged in dishonest activities or made any  
26 misrepresentation, the commissioner may bring a civil suit in a  
27 court of competent jurisdiction to enjoin the violation or potential  
28 violation, seek civil penalties pursuant to paragraph (2) of this  
29 subsection, or both.

30 (2) Any person who violates any provision of this act shall be  
31 liable, in a civil action brought by the commissioner in a court of  
32 competent jurisdiction, for a penalty of not more than \$5,000 for the  
33 first violation, \$10,000 for the second violation and \$15,000 for  
34 each subsequent violation. The penalty shall be paid to the  
35 commissioner to be used in accordance with this act and shall be  
36 collected pursuant to the "Penalty Enforcement Law of 1999,"  
37 P.L.1999, c.274 (C.2A:58-10 et seq.). The court shall also award  
38 court costs and reasonable attorneys' fees to the commissioner.

39  
40 10. A student loan servicer shall comply with all applicable  
41 federal laws and regulations relating to student loan servicing,  
42 including, but not limited to, the "Truth in Lending Act" (15 U.S.C.  
43 s.1601 et seq.). In addition to any other remedies provided by law,  
44 a violation of any federal law or regulation shall be deemed a  
45 violation of this section and a basis upon which the commissioner  
46 may take enforcement action pursuant to section 9 of this act.

1 11. All costs of the implementation of this act shall be regarded  
2 as administrative costs of the Department of Banking and Insurance.  
3 Moneys collected from license fees, inspections, or violations  
4 pursuant to this act shall be expended by the commissioner for the  
5 purpose of administering the provisions of this act.

6  
7 12. The Commissioner of Banking and Insurance shall, in  
8 accordance with the "Administrative Procedure Act," P.L.1968,  
9 c.410 (C.52:14B-1 et seq.), adopt the rules and regulations  
10 necessary to implement the provisions of this act.

11  
12 13. This act shall take effect on the 120th day next following  
13 enactment, provided that the Commissioner of Banking and  
14 Insurance may take any anticipatory actions necessary to implement  
15 the provisions of this act.

16  
17  
18 STATEMENT

19  
20 This bill establishes the Office of the Student Loan Ombudsman  
21 within the Department of Banking and Insurance. Under the bill,  
22 the ombudsman will, at a minimum:

23 (1) receive, review, and attempt to resolve any complaints from  
24 student loan borrowers;

25 (2) compile and analyze data on student loan borrower  
26 complaints;

27 (3) assist student loan borrowers to understand their rights and  
28 responsibilities;

29 (4) provide information and make recommendations to the  
30 public, agencies, legislators, and others regarding the problems and  
31 concerns of student loan borrowers;

32 (5) analyze and monitor the development and implementation of  
33 federal, State, and local laws, regulations, and policies relating to  
34 student loan borrowers;

35 (6) review the complete student education loan history for any  
36 student loan borrower who has provided written consent for review;  
37 and

38 (7) disseminate information concerning the availability of the  
39 Student Loan Ombudsman to assist student loan borrowers and  
40 potential student loan borrowers.

41 Under the bill, no later than October 1, 2018, the ombudsman, in  
42 consultation with the commissioner, is required to establish and  
43 maintain a student loan borrower education course that will include  
44 educational presentations and materials regarding student education  
45 loans.

46 The bill also regulates student loan servicers. Under the bill,  
47 student loan servicers are required to obtain a license from the  
48 commissioner before directly or indirectly acting as a student loan

1 servicer. State or federally chartered banks, savings banks, savings  
2 and loan associations, and credit unions are exempt from the  
3 licensure requirement. Any person seeking to act within the State  
4 as a student loan servicer must make a written application to the  
5 commissioner accompanied by:

- 6 (1) a financial statement prepared by a certified public  
7 accountant or a public accountant;
- 8 (2) the history of criminal convictions of the applicant or certain  
9 other individuals in the case of certain business entities; and
- 10 (3) certain licensure fees.

11 Upon the filing of an application for an initial license and the  
12 payment of the fees for license and investigation, the commissioner  
13 will investigate the financial condition and responsibility, financial  
14 and business experience, character and general fitness of the  
15 applicant.

16 The bill provides that licenses expire at the close of business on  
17 September 30 of the odd-numbered year following their issuance,  
18 unless renewed or earlier surrendered, suspended or revoked. The  
19 bill establishes procedures for license renewal and surrender.

20 The bill requires student loan servicers, and certain other entities  
21 exempt from the other requirements of the bill, to maintain student  
22 loan records for at least two years following final payment or  
23 assignment of the loan. The records are to be provided to the  
24 commissioner for inspection upon request.

25 The bill grants the commissioner the authority to conduct certain  
26 investigations and examinations for purposes of initial licensing,  
27 license renewal, license suspension, license revocation or  
28 termination, or general or specific inquiry or investigation to  
29 determine compliance, in which the commissioner may access,  
30 receive and use any books, accounts, records, files, documents,  
31 information or evidence.

32 The bill also provides that any person who violates any provision  
33 of this act will be liable, in a civil action brought by the  
34 commissioner in a court of competent jurisdiction, for a penalty of  
35 not more than \$5,000 for the first violation, \$10,000 for the second  
36 violation and \$15,000 for each subsequent violation.

# ASSEMBLY HIGHER EDUCATION COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 455**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 6, 2019

The Assembly Higher Education Committee reports favorably Assembly Bill No. 455 with committee amendments.

As amended, this bill directs the Commissioner of Banking and Insurance to designate a Student Loan Ombudsman within the Department of Banking and Insurance. The bill also provides for the regulation of student loan servicers.

Under the bill, the ombudsman will, at a minimum:

- (1) receive, review, and attempt to resolve any complaints from student loan borrowers;
- (2) compile and analyze data on student loan borrower complaints;
- (3) assist student loan borrowers to understand their rights and responsibilities;
- (4) provide information and make recommendations to the public, agencies, legislators, and others regarding the problems and concerns of student loan borrowers;
- (5) analyze and monitor the development and implementation of federal, State, and local laws, regulations, and policies relating to student loan borrowers;
- (6) review the complete student education loan history for any student loan borrower who has provided written consent for review; and
- (7) disseminate information concerning the availability of the Student Loan Ombudsman to assist student loan borrowers and potential student loan borrowers.

No later than October 1, 2020, the commissioner is required to ensure the ombudsman and the Higher Education Student Assistance Authority establish and maintain a student loan borrower education course that will include educational presentations and materials regarding student education loans.

Under the bill, student loan servicers are required to obtain a license from the commissioner before directly or indirectly acting as a student loan servicer. State or federally chartered banks, savings banks, savings and loan associations, and credit unions are exempt from the licensure requirement. Any person seeking to act within the State as a student loan servicer must make a written

application to the commissioner utilizing the Nationwide Mortgage Licensing System and Registry accompanied by:

- (1) a financial statement prepared by a certified public accountant or a public accountant;
- (2) the history of criminal convictions of the applicant or certain other individuals in the case of certain business entities; and
- (3) licensure and investigation fees and a fee to be paid to the Nationwide Mortgage Licensing System and Registry.

Upon the filing of an application for an initial license and the payment of the fees for license and investigation, the commissioner will investigate the financial condition and responsibility, financial and business experience, character and general fitness of the applicant. The bill provides that licenses expire at the close of business on December 31 of the year of issuance, unless renewed or earlier surrendered, suspended or revoked. The bill establishes procedures for license renewal and surrender.

The bill provides that the commissioner will automatically issue a limited, irrevocable license to any person servicing a student loan under a contract with the United States Department of Education. That person will be exempt from the required application procedures, other than the payment of the required licensure fee and investigation fee, to the extent the person is servicing federal loans. That person will be considered to have met all of the requirements established under the bill in regard to financial condition and responsibility and general fitness as established under the bill for the servicing of federal loans.

The bill requires student loan servicers, and certain other entities exempt from the other requirements of the bill, to maintain student loan records for at least two years following final payment or assignment of the loan. The records are to be provided to the commissioner for inspection upon request.

The bill grants the commissioner the authority to conduct certain investigations and examinations for purposes of initial licensing, license renewal, license suspension, license revocation or termination, or general or specific inquiry or investigation to determine compliance, in which the commissioner may access, receive and use any books, accounts, records, files, documents, information or evidence.

The bill establishes certain actions that a student loan servicer must take upon an inquiry from a student loan borrower in regard to acknowledging and responding to the inquiry. The bill also establishes required procedures to be followed by a student loan servicer in the event of an overpayment on a student loan, or in the event of the sale, assignment, or transfer of a student education loan.

The bill also provides that any person who violates any of the bill's provision will be liable, in a civil action brought by the



commissioner in a court of competent jurisdiction, for a penalty of not more than \$10,000 for the first violation and \$20,000 for the second and each subsequent violation. In addition, a student loan borrower who suffers any loss of moneys as a result of the use by a student loan servicer of any method, act, or practice declared unlawful under the bill may bring an action in a court of competent jurisdiction. In addition to any other appropriate legal or equitable relief, the court will award the student loan borrower threefold the damages sustained by the borrower, and will also award the borrower reasonable attorneys' fees, filing fees, and reasonable costs of suit.

The bill requires a student loan servicer licensee to annually file a report with the commissioner providing information on the business conducted as a licensee during the preceding calendar year. A student loan servicer licensee must also submit to the Nationwide Mortgage Licensing System and Registry a student loan servicer call report of condition, in the form and manner, and with any information, at any time as may be required by that entity.

As amended and reported by the committee, this bill is identical to Senate Bill No. 1149, which also was amended and reported by the committee on this same date.

This bill was pre-filed for introduction in the 2018-2019 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

#### COMMITTEE AMENDMENTS:

The committee amended the bill to:

- direct the Commissioner of Banking and Insurance to designate a Student Loan Ombudsman within the Department of Banking and Insurance. In its original form, the bill created the Office of the Student Loan Ombudsman in the Department of Banking and Insurance and provided for the appointment of the ombudsman by the Governor;
- specify that the ombudsman will receive and review complaints from student loan borrowers and provide that complaints in regard to student loan servicers will be referred to the commissioner;
- provide that an application made to the commissioner for an initial license as a student loan servicer will utilize the Nationwide Mortgage Licensing System and Registry;
- provide that a license will expire at the close of business on December 31 of the year of its issuance, rather than September 30 of the odd-numbered year following its issuance;
- provide that the commissioner will automatically issue a limited, irrevocable license to any person servicing a student loan under a contract with the United States Department of Education;

- require a student loan servicer to keep on file with the commissioner a minimum surety bond of \$30,000. The commissioner will determine by regulation who will be eligible to receive protection afforded by the bond and may increase the required bond amount;
- grant the commissioner the authority to conduct certain investigations and examinations for purposes of initial licensing, license renewal, license suspension, license revocation or termination, or general or specific inquiry or investigation to determine compliance, in which the commissioner may access, receive and use any books, accounts, records, files, documents, information or evidence;
- establish procedures to be followed by a student loan servicer upon receipt of an inquiry from a student loan borrower, upon receipt of an overpayment on a student education loan, and in the event of the sale, assignment or other transfer of the servicing of a student education loan that results in a change in the identity of the person to whom payment is made;
- provide that any person who violates any provision of the bill will be liable, in a civil action brought by the commissioner in a court of competent jurisdiction, for a penalty of not more than \$10,000 for the first violation and \$20,000 for the second and each subsequent violation;
- provide that a student loan borrower who suffers any loss of moneys as a result of the use by a student loan servicer of any method, act, or practice declared unlawful under the bill may bring an action in a court of competent jurisdiction. The court may award threefold the damages sustained by the borrower and will also award fees and filing costs;
- require a student loan servicer licensee to annually file a report with the commissioner providing information on the business conducted as a licensee during the preceding calendar year. The student loan servicer must submit to the Nationwide Mortgage Licensing System and Registry a student loan service call report; and
- provide for an annual assessment on student loan servicers sufficient to cover the annual cost of the bill's implementation.

**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY, No. 455**  
**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

DATED: MARCH 8, 2019

**SUMMARY**

**Synopsis:** Establishes Office of Student Loan Ombudsman; regulates student loan servicers.

**Type of Impact:** Indeterminate increase in State expenditures, partially if not fully offset by an indeterminate increase in revenue; General Fund

**Agencies Affected:** Department of Banking and Insurance

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Annual</u></b>
<b>State Cost</b>	Indeterminate
<b>State Revenue</b>	Indeterminate

- The Office of Legislative Services (OLS) estimates that the bill may result in an indeterminate increase in expenditures from the General Fund due to administrative costs incurred by the Department of Banking and Insurance (DOBI) in establishing and maintaining the Office of the Student Loan Ombudsman and regulating certain student loan servicers.
- The OLS further estimates that the enactment of this bill may result in an indeterminate increase in revenue to the General Fund due to the collection of license fees, investigation fees, and penalties resulting from violations of the provisions of the bill. Under the bill, such revenue is to be expended on the administrative costs of the bill. Any marginal costs not covered by the increase in revenue can be charged back to the industry through the special needs assessment in DOBI.
- The OLS notes that, pursuant to the special needs assessment of DOBI, the bill may also result in an indeterminate increase in revenue due to a potential assessment on student loan servicers who obtain a license from the commissioner.

## BILL DESCRIPTION

This bill establishes the Office of the Student Loan Ombudsman within the DOBI and regulates student loan servicers. Under the bill, the ombudsman will:

- (1) receive, review, and attempt to resolve any complaints from student loan borrowers;
- (2) compile and analyze data on student loan borrower complaints;
- (3) assist student loan borrowers to understand their rights and responsibilities;
- (4) provide information and make recommendations to the public, agencies, legislators, and others regarding the problems and concerns of student loan borrowers;
- (5) analyze and monitor the development and implementation of federal, State, and local laws, regulations, and policies relating to student loan borrowers;
- (6) review the complete student education loan history for any student loan borrower who has provided written consent for review; and
- (7) disseminate information concerning the availability of the Student Loan Ombudsman to assist student loan borrowers and potential student loan borrowers.

No later than October 1, 2018, the ombudsman, in consultation with the Commissioner of Banking and Insurance, is required to establish and maintain a student loan borrower education course that will include educational presentations and materials regarding student education loans.

Under the bill, student loan servicers are required to obtain a license from the commissioner before directly or indirectly acting as a student loan servicer. State or federally chartered banks, savings banks, savings and loan associations, and credit unions are exempt from the licensure requirement. Any person seeking to act within the State as a student loan servicer must make a written application to the commissioner accompanied by:

- (1) a financial statement prepared by a certified public accountant or a public accountant;
- (2) the history of criminal convictions of the applicant or certain other individuals in the case of certain business entities; and
- (3) certain licensure fees.

Upon the filing of an application for an initial license and the payment of the fees for license and investigation, the commissioner will investigate the financial condition and responsibility, financial and business experience, character and general fitness of the applicant. The bill provides that licenses expire at the close of business on September 30 of the odd-numbered year following their issuance, unless renewed or earlier surrendered, suspended or revoked. The bill establishes procedures for license renewal and surrender.

The bill requires student loan servicers, and certain other entities exempt from the other requirements of the bill, to maintain student loan records for at least two years following final payment or assignment of the loan. The records are to be provided to the commissioner for inspection upon request.

The bill grants the commissioner the authority to conduct certain investigations and examinations for purposes of initial licensing, license renewal, license suspension, license revocation or termination, or general or specific inquiry or investigation to determine compliance, in which the commissioner may access, receive and use any books, accounts, records, files, documents, information or evidence.

The bill also provides that any person who violates any of its provisions will be liable, in a civil action brought by the commissioner in a court of competent jurisdiction, for a penalty of not more than \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for each subsequent violation.

## FISCAL ANALYSIS

### *EXECUTIVE BRANCH*

None received.

### *OFFICE OF LEGISLATIVE SERVICES*

This bill was modeled after Connecticut Substitute House Bill No. 6915 of 2015, which was enacted in July 2015. The actual cost of that bill as enacted is unknown. However, according to the Connecticut Office of Fiscal Analysis, the total FY 2017 cost of the bill was estimated to be \$198,957, with \$25,000 anticipated for the course development and the remaining expenditures associated with the ombudsman's salary and fringe benefits. The Office of Fiscal Analysis did not anticipate a fiscal impact resulting from the additional licensure and enforcement responsibilities of the state's Banking Department. Furthermore, the Office of Fiscal Analysis expected that 20 to 50 student loan servicers would be subject to the licensure requirements of the bill, providing a revenue range in FY 2017 from \$36,000 to \$90,000 from the biennial licensure (\$1,000) and initial investigation (\$800) fees provided under the bill.

Using this analysis, the maximum revenue estimated to be generated by the Connecticut bill is \$108,957 short of the total estimated expenditures of the bill for FY 2017. The OLS notes that this analysis does not include any estimated revenue generated from violations of the provisions of the bill. The OLS further notes the anticipated \$25,000 expense associated with the course development is assumed to be isolated to FY 2017, and therefore not an annual expense.

Furthermore, the Department of Legislative Services of the Maryland General Assembly reported in 2018 a Fiscal and Policy Note on House Bill No. 1642, which has a similar legislative structure to Connecticut's bill. The Department of Legislative Services estimated an increase in General Fund expenditures of \$156,700 in FY 2019 and \$196,400 in FY 2020 for additional personnel and operating expenses. The department estimated that the proposed legislation would not affect State revenues.

The OLS estimates that the bill may result in an indeterminate increase in expenditures from the General Fund due to administrative costs incurred by the DOBI in establishing and maintaining the Office of the Student Loan Ombudsman and regulating certain student loan servicers. The OLS further estimates that the enactment of this bill may result in an indeterminate increase in revenue to the General Fund due to the collection of license fees, investigation fees, and penalties resulting from violations of the provisions of the bill. Under the bill, such revenue is to be expended on the administrative costs of the bill.

Under the bill, the Department of Banking and Insurance may incur an initial one-time expense to establish a student loan borrower education course. Furthermore, annual costs may result from: a) any salary and fringe benefits associated with the staff of the Office of the Student Loan Ombudsman; b) any other administrative expenses associated with the Office of the Student Loan Ombudsman; c) promotion, implementation, and review of the student loan borrower education course; and d) the additional licensure and enforcement responsibilities associated with regulating student loan servicers.

The bill provides that all revenue generated from fees and violations, as established by the bill, is to be expended for the administrative costs associated with the bill. However, it is unclear how many student loan servicers would be subject to the licensure requirements of the bill and how many infractions those servicers may commit on an annual basis. As such, the OLS has insufficient information with which to estimate the total amount of revenue generated under the bill. Unlike the Connecticut and Maryland analyses for which the amount of revenues estimated

would not prove sufficient to offset the total expenses estimated, the OLS notes that any marginal costs not covered by the increase in revenue realized under the bill can be charged back to the industry through the dedicated assessment funding mechanism for the special needs of the Division of Banking. The Division of Banking imposes two assessments on financial entities on or around October 1 of each year for the division's special needs; a Banking Licensing Assessment and a Banking Depositor Assessment (N.J.S.A.17:1C-33 et seq.). These assessments are based on calendar year business for each company and fiscal year expenditures incurred by or on behalf of the Division of Banking, as certified by the Director of the Division of Budget and Accounting in the Department of the Treasury. These certified expenses include, in addition to the direct costs of personal service, the costs of maintenance and operation, the costs of employee benefits and workers' compensation, rentals for space occupied in State-owned or State-leased buildings and all other direct and indirect costs of the administration of those functions, as well as any amounts remaining uncollected from the assessment of the previous fiscal year (N.J.S.A.17:1C-35).

The OLS notes that the licensure fees under the bill are collected on a biennial basis and expire at the close of business on September 30 of the odd numbered year following the issuance of the license. Therefore, after the initial collection of such fees following enactment, it is likely that revenue will be greater during odd numbered years.

The OLS furthermore notes that, according to the special needs assessment of the Division of Banking, the bill may also result in an indeterminate increase in revenue due to a potential assessment on student loan servicers who obtain a license from the commissioner.

*Section: Commerce, Labor and Industry*

*Analyst: Juan C. Rodriguez  
Associate Fiscal Analyst*

*Approved: Frank W. Haines III  
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# Acting Governor Oliver Signs Legislation to Promote Transparency for Students and Improve College Affordability

07/30/2019

## Acting Governor Oliver Signs Legislation to Promote Transparency for Students and Improve College Affordability

*New Laws Will Help Students Understand the True Cost of College and Protect Student Loan Borrowers*

**South Orange** – Acting Governor Sheila Oliver, joined by Higher Education Student Assistance Authority Executive Director David Socolow, Department of Banking and Insurance Commissioner Marlene Caride, and Deputy Secretary of Higher Education Diana Gonzalez, today signed two bills into law to provide clear and comprehensible financial information to students and protect student borrowers.

The first law (S2046) requires institutions of higher education to improve transparency of tuition and fees by providing a financial aid “shopping sheet” to prospective students. This college financing worksheet, or “shopping sheet,” will provide clear information on costs, loan options, and estimated debt levels, so students and their families can better understand the net price of attending college and can more easily compare financial aid package offers from institutions across New Jersey. The prime sponsors of this bill are Senator Shirley Turner, Assemblywoman Pamela Lampitt, Assemblyman Gary Schaer, and Assemblyman Raj Mukherji.

“The laws I signed today continue our Administration’s ongoing commitment to making college more affordable and accessible,” **said Acting Governor Sheila Y. Oliver**. “We have seen the negative impact that predatory lenders and misinformation can have on our students and these vital new consumer protection laws will help to protect and support them as they pursue postsecondary education. Students will be able to better understand the true cost of college, so they can make wise choices and determine the appropriate amount to borrow, and with strong standards and a new State watchdog, we will ensure they are treated fairly by the companies that service their loans. Governor Murphy and I proudly support these laws, which will help put New Jersey students in control when it comes to their education.”

Senator Sandra Cunningham, Senator Chris Brown, Assemblyman Gary Schaer, Assemblywoman Annette Quijano, Assemblyman Raj Mukherji, Assemblyman Jamel Holley, and Assemblyman Joe Danielsen are the prime sponsors of the other bill (S1149) signed into law today, which creates strong new protections for student loan borrowers by regulating the companies that service student loans. This new law will require student loan servicing companies to be licensed by the New Jersey Department of Banking and Insurance (DOBI), and will crack down on deceptive practices by servicers that provide flawed information to student borrowers, apply payments in ways that cause unnecessary late fees and harm borrowers’ credit scores, or fail to place them in repayment plans that are best designed to assist in paying off their loans. The bill also creates a New Jersey Student Loan Ombudsman within DOBI, who will help borrowers with complaints or unanswered questions about student loans and monitor and review complaints about student loan servicers operating in our state.

“This bill appoints an ombudsman who will advocate on behalf of families as they prepare to finance the education of their children,” **said Senator Sandra Cunningham**. “Aspiring to a college degree should never threaten the financial viability of your household.”

“This issue is personal for me—I worked with students first-hand figuring out how to pay for college and then went on to develop the original Department of Education Financial Aid Shopping Sheet during the Obama administration. Those experiences helped me see the deficiencies in our aid information system. No student should be left in the dark about what college costs or whether their financial aid is a grant or a loan. Today the state of New Jersey is taking a meaningful step to shed light on this process. Our higher education state plan stresses the importance of clear and comprehensible financial information, including information about loan repayment and college outcomes, before students decide to attend an institution and potentially sign up for debt,” **said Secretary of Higher Education Zakiya Smith Ellis**. “The signature of the Acting Governor today makes good on the vision announced in that plan.”

“New Jersey students are fortunate to have these additional protections in place. The new laws signed today will

deliver cost transparency to benefit students who are just entering college, as well as financial security for those who are striving to repay their student loan debt,” **said David Socolow, Executive Director of the New Jersey Higher Education Student Assistance Authority.** “Because students and families deserve to know the true cost of college up front, today New Jersey is taking a stand against college financial aid packages that cause confusion by lumping loans together with grants and scholarships to mask the net cost. And the new consumer protections enacted today will help student borrowers get treated fairly by the national student loan servicing companies. From before matriculation to after graduation, students should know that the State is on their side.”

“Access to higher education is a key priority of the Murphy Administration and I am proud that we are establishing new protections for students working to achieve their dreams of attending college and attaining long-term financial security. These new laws will better ensure that borrowers are treated fairly by loan servicers and have access to clear information about the impact of student loans over the course of repayment,” **said Department of Banking and Insurance Commissioner Marlene Caride.** “Through the licensing of student loan servicers and enhanced consumer protections under the law, the Department of Banking and Insurance will advocate on behalf of our residents to help them navigate the loan process and will assist in resolving disputes. Under the law’s provisions, the department will also hold accountable companies that do not comply with the law.”

“As the cost of attending college continues to rise, a record number of New Jersey residents are taking on student loans, so they can receive the benefits of a college education,” **said Assemblymembers Gary Schaer, Annette Quijano, Raj Mukherji, Jamel Holley, and Joseph Danielsen.** “With the creation of the Office of Student Loan Ombudsman, we will provide essential resources for student loan borrowers to understand their rights and responsibilities. The core functions of the Office will be to mediate grievances, address concerns, provide education about the student loan process, and monitor implementation of student loan policies. The new law will also establish regulations on student loan providers and ensure that all providers are properly licensed. This will establish further protection and transparency for our college students and their families. This law will give our students the necessary resources to become the future innovators and trailblazers that will lead New Jersey.”

“Too often, a term bill will just say ‘campus fee’ or ‘school fee’ without any explanation of how the money will be used, and there’s an expectation that students will just pay,” **said Assemblywoman Pamela Lampitt.** “When many students are taking on unbearable debt in order to pay for higher education, they at least deserve to know how these fees are spent.”

“Student fees often comprise a significant portion of an already exorbitant college price tag,” **said Assemblyman Gary Schaer.** “Students and their parents deserve to know where their money is going and what the full cost will be before they make one of the biggest decisions of their life.”

“Students sometimes pay upwards of \$2,000 in fees alone each semester on top of tuition that goes up year after year,” **said Assemblyman Raj Mukherji.** “Increasing transparency and accountability, along with the creation of a standardized financial aid shopping sheet, are just a few steps we can take to help students who continue to incur debt in pursuit of their dreams.”

“As college costs rose, more and more young people began turning to private entities for loans to fund their education,” **said Senator Sandra Cunningham.** “Now, as a generation struggles to make monthly payments and navigate their financial futures, it is our responsibility to ensure they are not being exploited. This legislation will allow us to monitor the student loan industry, so we can step in and take action when necessary.”

“Given the rising cost of a degree and the mounting student debt crisis, it is crucial students understand the costs they will incur and the likelihood they will be able to repay their student loans,” **said Senator Shirley Turner.** “Providing students with a comprehensive breakdown prior to choosing where to attend school will allow them to make a more informed decision that takes into account their long-term financial health.”

“With Washington turning its back on student loan borrowers, it is more important than ever that states fight for their citizens,” **said Student Borrower Protection Center Executive Director and former Consumer Financial Protection Bureau student loan ombudsman Seth Frotman.** “This legislation is an important step toward ensuring that the over one million New Jersey student loan borrowers have critical protections against predatory players.”