

AMENDED IN SENATE JUNE 20, 2019

AMENDED IN ASSEMBLY MAY 16, 2019

AMENDED IN ASSEMBLY MARCH 25, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 376**

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**Introduced by Assembly Member Mark Stone**  
**(Principal coauthor: Assembly Member Limón)**  
**(Coauthor: Assembly Member Cervantes)**  
*(Coauthors: Assembly Members Cervantes and Petrie-Norris)*

February 5, 2019

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An act to add Title 1.6C.10 (commencing with Section 1788.100) to Part 4 of Division 3 of the Civil Code, and to amend ~~Section 28106 of Sections 28104, 28106, and 28130 of, and to repeal Sections 28134 and 28136 of~~ the Financial Code, relating to student loans.

LEGISLATIVE COUNSEL'S DIGEST

AB 376, as amended, Mark Stone. Student loan servicing.

Existing law, the Student Loan Servicing Act, prohibits a person from engaging in the business of servicing a student loan in California without first obtaining a license. Existing law commits the administration of these provisions to the Commissioner of Business Oversight and grants the commissioner various powers in this regard, including the authority to conduct investigations of applicants and licensees.

Existing law, the Rosenthal Fair Debt Collection Practices Act, regulates the collection of consumer debts by debt collectors, as defined. Under existing law, a debt collector who violates the act is liable to a debtor for actual damages resulting from the violation, and is subject

to additional civil penalties for any willful or knowing violation of the act, and other specified remedies.

This bill would impose new requirements on ~~persons engaged in student loan servicing in this state~~: *a student loan servicer, defined as any person engaged in the business of servicing student loans in the state*. These requirements would include the timely posting, processing, and crediting of student loan payments within certain timeframes, applying overpayments consistent with the best interest of a student loan borrower, applying partial payments to minimize late fees and negative credit reporting, maintaining accurate records, timely processing of paperwork, and diligently overseeing service providers. The bill would require ~~persons engaged in servicing a student loan servicer~~ to provide specialized training for ~~any~~ customer service personnel that advises military borrowers, borrowers in public service, borrowers with disabilities, and older borrowers. The bill would prohibit ~~those persons a student loan servicer~~ from engaging in ~~any~~ unfair or deceptive practices, or abusive acts or practices in connection with the servicing of a student loan, as specified. The bill would authorize a consumer who suffers damages as a result of a person's failure to comply with these provisions to bring an action for actual damages, injunctive relief, restitution, punitive damages, attorney's fees, and other relief, including treble damages in certain circumstances. The bill would define terms for purposes of its provisions.

The bill would require the commissioner, within 180 days following the operative date of these provisions, to designate a Student Borrower Advocate within the department to provide timely assistance to student loan borrowers, and to hire additional staff, as needed to implement these provisions. The bill would require the Student Borrower Advocate to receive and review complaints, to refer complaints to an appropriate unit within the department that would be authorized to investigate the complaint, and to refer complaints regarding servicers not subject to licensing under the Student Loan Servicing Act to the Department of Justice, which would be permitted to investigate those complaints. The bill would require complaints regarding any private postsecondary educational institution licensed by the Bureau for Private Postsecondary Education to be referred to the Bureau for Private Postsecondary Education's Office of Student Assistance and Relief. The bill would require the Student Borrower Advocate to confer with the ~~Department of Business Oversight, the Department of Justice, Justice~~ and the Office of Student Assistance and Relief regarding the student loan servicing

complaints, the proper referral processes for those complaints and the reporting requirements imposed by the bill. The bill would require the Student Borrower Advocate, not later than 18 months after the operative date of the bill, and no less than once yearly thereafter, to submit a report to the appropriate committees of the Legislature regarding the implementation of these provisions, the effectiveness of the Student Borrower Advocate, the types of complaints received, and other data and analysis on student loan issues.

The bill would also require the Department of Business Oversight to monitor for risks to consumers in the provision of student loan servicing, and would authorize the commissioner to gather information regarding the organization, business conduct, and activities of ~~persons engaged in student loan servicing~~ *student loan servicers*. The bill would require the commissioner, not later than 180 days following operative date of the act, and thereafter pursuant to certain timeframes, to gather and compile information from ~~persons engaged in student loan servicing~~ *student loan servicers* and to develop and publicize metrics based on the data collected. Among other actions, the bill would authorize the commissioner to require ~~persons engaged in student loan servicing~~ *student loan servicers* to file, under oath or otherwise, annual or special reports or answers in writing to specific questions. By expanding the crime of perjury, the bill would impose a state-mandated local program.

The bill would include related legislative ~~findings~~ *findings and would make conforming and nonsubstantive changes to provisions in the Student Loan Servicing Act*.

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

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

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

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

- 1 SECTION 1. (a) The Legislature finds and declares all of the
- 2 following:
- 3 (1) California faces a student debt crisis. Across California,
- 4 more than 3.7 million borrowers owe nearly \$125 billion in student
- 5 debt—more than \$33,000 on average. In 2017 alone, more than

1 one million Americans defaulted on a student loan  
2 nationwide—three times the number who lost homes to foreclosure  
3 over this period.

4 (2) For these borrowers, and the countless others who are  
5 making their payments but barely getting by, these financial issues  
6 affect every aspect of their lives. From buying a home to choosing  
7 a career, from starting a family to saving for retirement, student  
8 debt casts a shadow that many Californians cannot escape.

9 (3) Research shows that the ripple effects of student debt are  
10 substantial. California is just beginning to see how this debt fuels  
11 economic, gender, and racial inequality, inhibits asset  
12 accumulation, accelerates wealth gaps, and carves out a  
13 generational divide that will take decades to erase.

14 (4) To add insult to injury, the \$1.5 trillion student loan market  
15 is plagued with predatory practices. The Consumer Financial  
16 Protection Bureau has continued to find that student loan borrowers  
17 encounter servicers that discourage borrower-friendly alternative  
18 payment plans, fail to respond to questions and payment processing  
19 errors, and fail to provide sufficient information to borrowers  
20 regarding payments, benefits, interest rates, and other charges.

21 (5) Between 2017 and 2019, the California Attorney General  
22 and attorneys general in Washington, Illinois, Massachusetts, New  
23 York, Pennsylvania, and Mississippi filed lawsuits or took  
24 enforcement actions against student loan servicers—the  
25 private-sector companies that handle loan payments and manage  
26 borrowers' accounts. The targets of these enforcement actions  
27 collectively handle one-half of all student debt in the United States.

28 (6) The federal government has failed to take necessary action  
29 to halt widespread abuses. In February 2019, the United States  
30 Department of Education's Office of Inspector General reported  
31 improper practices at each of the largest student loan servicers and  
32 criticized the Department of Education for failing to provide  
33 adequate oversight. In 2018, the Trump Administration's Treasury  
34 Department criticized the Department of Education, explaining  
35 that "[f]ederal student loan servicing currently lacks effective  
36 minimum servicing standards."

37 (7) The State of California has an opportunity and an obligation  
38 to act. In 2016, California passed the Student Loan Servicing Act,  
39 requiring all student loan servicers to obtain licenses to operate in  
40 California and to be subject to routine oversight by the Department

1 of Business Oversight. This is a critical first step to protect  
2 California student loan borrowers’ rights.

3 (8) With the increasingly uncertain federal landscape, it is now  
4 more important than ever to ensure that California student loan  
5 borrowers will be given meaningful access to federal affordable  
6 repayment options and loan forgiveness benefits, reliable  
7 information, and quality customer service and fair treatment.

8 (b) Therefore, it is the intent of the Legislature to do all of the  
9 following:

10 (1) Promote meaningful access to affordable repayment and  
11 loan forgiveness benefits for student loan borrowers in California.

12 (2) Ensure California borrowers can rely on information about  
13 student loans and loan repayment options provided by student loan  
14 servicers.

15 (3) Build upon the Student Loan Servicing Act to set effective  
16 minimum student loan servicing standards and to ensure that  
17 California borrowers are protected from predatory student loan  
18 industry practices.

19 (4) Promote the public interest in furtherance of the state’s  
20 historic police powers to protect the health, welfare, and safety of  
21 the state and, in furtherance of the public interest, the act should  
22 be liberally construed to effectuate that intent.

23 SEC. 2. Title 1.6C.10 (commencing with Section 1788.100)  
24 is added to Part 4 of Division 3 of the Civil Code, to read:

25  
26 TITLE 1.6C.10. STUDENT LOANS: BORROWER RIGHTS

27  
28 CHAPTER 1. STUDENT BORROWER BILL OF RIGHTS

29  
30 1788.100. For purposes of this title, the following definitions  
31 apply:

32 (a) “Borrower” means either of the following:

33 (1) A person who has received or agreed to pay a student loan.

34 (2) A person who shares responsibility for repaying a student  
35 loan with a person described in paragraph (1).

36 (b) “Commissioner” means the Commissioner of Business  
37 Oversight.

38 (c) “Department” means the Department of Business Oversight.

39 (d) “Engage in the business” means, without limitation, servicing  
40 student loans.

1 (e) “In this state” means any activity of a person relating to  
2 servicing student loans that originates from this state and is directed  
3 to persons outside this state, ~~or~~ that originates from outside this  
4 state and is directed to persons inside this state, or that originates  
5 inside this state and is directed to persons inside this state.

6 (f) “Licensee” means a person licensed pursuant to the Student  
7 Loan Servicing Act (Division 12.5 (commencing with Section  
8 28100) of the Financial Code).

9 (g) “Person” means an individual, a corporation, a partnership,  
10 a limited liability company, an association, a trust, an  
11 unincorporated organization, a government, or a political  
12 subdivision of a government, and any other entity.

13 (h) “Qualified request” means any inbound ~~inquiry or complaint~~  
14 ~~submitted to the person engaged in servicing student loans in the~~  
15 ~~state that cannot be completed in a single phone call.~~ *telephone*  
16 *call, the subject of which cannot be resolved in a single phone*  
17 *call, made by a borrower to a student loan servicer in which either*  
18 *the borrower requests specific information from the student loan*  
19 *servicer or reports what the borrower believes to be an error*  
20 *regarding the borrower’s account.*

21 (i) “Qualified written request” means a written correspondence  
22 made by a borrower, other than notice on a payment medium  
23 supplied by a ~~licensee~~, *student loan servicer*, that is transmitted  
24 by mail, facsimile, or electronically through an email address or  
25 internet website designated by the ~~licensee~~ *student loan servicer*  
26 to receive communications from a borrower that does all of the  
27 following:

28 (1) Enables the ~~licensee~~ *student loan servicer* to identify the  
29 name and account of the borrower.

30 (2) Includes a statement of the reasons for the belief by the  
31 borrower, to the extent applicable, that the account is in error or  
32 that provides sufficient detail to the servicer regarding information  
33 sought by the borrower, such as requesting a complete payment  
34 history for the loan or the borrower’s account, a copy of the  
35 borrower’s student loan promissory note, or the contact information  
36 for the creditor to whom the borrower’s student loan is owed.

37 (j) “Servicing” means any of the following activities related to  
38 a student loan of a borrower:

39 (1) Performing both of the following:

1 (A) Receiving any scheduled periodic payments from a borrower  
2 or any notification that a borrower made a scheduled periodic  
3 payment.

4 (B) Applying payments to the borrower’s account pursuant to  
5 the terms of the student loan or the contract governing the  
6 servicing.

7 (2) During a period when no payment is required on a student  
8 loan, performing both of the following:

9 (A) Maintaining account records for the student loan.

10 (B) Communicating with the borrower regarding the student  
11 loan on behalf of the owner of the student loan promissory note.

12 (3) Interacting with a borrower related to that borrower’s student  
13 loan, with the goal of helping the borrower avoid default on their  
14 student loan or facilitating the activities described in paragraph  
15 (1) or (2).

16 (k) (1) “Student loan” means any loan made solely for use to  
17 finance a postsecondary education and costs of attendance at a  
18 postsecondary institution, including, but not limited to, tuition,  
19 fees, books and supplies, room and board, transportation, and  
20 miscellaneous personal expenses. A “student loan” includes a loan  
21 made to refinance a student loan.

22 (2) (A) A “student loan” shall not include an extension of credit  
23 under an open-end consumer credit plan, a reverse mortgage  
24 transaction, a residential mortgage transaction, or any other loan  
25 that is secured by real property or a dwelling.

26 (B) A “student loan” shall not include an extension of credit  
27 made by a postsecondary educational institution to a borrower if  
28 one of the following applies:

29 (i) The term of the extension of credit is no longer than the  
30 borrower’s education program.

31 (ii) The remaining, unpaid principal balance of the extension  
32 of credit is less than one thousand five hundred dollars (\$1,500)  
33 at the time of the borrower’s graduation or completion of the  
34 program.

35 (iii) The borrower fails to graduate or successfully complete  
36 their education program and has a balance due at the time of their  
37 disenrollment from the postsecondary institution.

38 (l) “Student loan servicer” means any person engaged in the  
39 business of servicing student ~~loans~~. *loans in this state*. A “student  
40 loan servicer” does not include ~~a~~ *either of the following*:

1 (1) A debt collector, as defined in subdivision (c) of Section  
2 1788.2 of the Civil Code, whose student loan debt collection  
3 business, and business operations, involve collecting, or attempting  
4 to collect, on defaulted student loans, that is, federal student loans  
5 for which no payment has been received for 270 days or more, or  
6 private student loans, in default, according to the terms of the loan  
7 documents. Debt collectors who also service nondefaulted student  
8 loans as part of their business and business operations are “student  
9 loan servicers.”

10 (2) *In connection with its responsibilities as a guaranty agency*  
11 *engaged in default aversion, a state or nonprofit private institution*  
12 *or organization having an agreement with the United States*  
13 *Secretary of Education under the Higher Education Act of 1965*  
14 *(20 U.S.C. Sec. 1078(b)).*

15 (m) *“Military borrower” means any of the following:*

16 (1) *A borrower who either:*

17 (A) *Is a servicemember as defined in the Servicemember Civil*  
18 *Relief Act (50 U.S.C. Sec. 3911).*

19 (B) *Self-identifies as a servicemember when interacting with a*  
20 *student loan servicer.*

21 (2) *A borrower who is a veteran of a branch of the Armed*  
22 *Forces as defined in Section 101 of Title 38 of the United States*  
23 *Code.*

24 (3) *An authorized representative of a borrower described in*  
25 *paragraph (1) or (2).*

26 (n) *“Borrower working in public service” means a borrower*  
27 *who a student loan servicer believes, or reasonably should believe,*  
28 *is employed in a public service job, as defined in the Higher*  
29 *Education Act (20 U.S.C 1087e(m)) and its implementing*  
30 *regulations.*

31 (o) *“Older borrower” means a borrower who a student loan*  
32 *servicer believes, or reasonably should believe, is a senior citizen,*  
33 *as defined in the Unruh Civil Rights Act (Section 51.3 of the Civil*  
34 *Code).*

35 (p) *“Borrower with disabilities” means a borrower who a*  
36 *student loan servicer believes, or reasonably should believe, is a*  
37 *person who has a disability, as defined in the Unruh Civil Rights*  
38 *Act (subdivision (b) of Section 54 of the Civil Code).*

39 1788.101. (a) (1) A person shall not engage in abusive acts  
40 or practices when servicing a student loan in this state.

- 1     ~~(b)~~
- 2     (2) An act or practice is abusive in connection with the servicing
- 3     of a student loan, if the act or practice does either of the following:
- 4     ~~(1)~~
- 5     (A) Materially interferes with the ability of a borrower to
- 6     understand a term or condition of a student loan.
- 7     ~~(2)~~
- 8     (B) Takes unreasonable advantage of any of the following:
- 9     ~~(A)~~
- 10    (i) A lack of understanding on the part of ~~the~~ a borrower of the
- 11    material risks, costs, or conditions of the student loan.
- 12    ~~(B)~~
- 13    (ii) The inability of ~~the~~ a borrower to protect the interests of the
- 14    borrower ~~in~~ when selecting or using either of the following:
- 15    ~~(i)~~
- 16    (I) A student loan.
- 17    ~~(ii)~~
- 18    (II) A feature, term, or condition of a student loan.
- 19    ~~(C)~~
- 20    (iii) The reasonable reliance by the borrower on a person
- 21    engaged in servicing a student loan to act in the interests of the
- 22    borrower.
- 23    ~~(e)~~
- 24    (3) Abusive acts and practices include, but are not limited to,
- 25    those described in ~~subdivision (b).~~ *paragraph (2).*
- 26    (b) *A student loan servicer shall not do any of the following:*
- 27    (1) *Directly or indirectly employ a scheme, device, or artifice*
- 28    *to defraud or mislead a borrower.*
- 29    (2) *Engage in an unfair or deceptive practice toward a borrower*
- 30    *or misrepresent or omit material information in connection with*
- 31    *the servicing of a student loan, including, but not limited to,*
- 32    *misrepresenting the amount, nature, or terms of a fee or payment*
- 33    *due or claimed to be due on a student loan, the terms and*
- 34    *conditions of the student loan agreement, or the borrower's*
- 35    *obligations under the student loan.*
- 36    (3) *Misapply payments made by a borrower to the outstanding*
- 37    *balance of a student loan.*
- 38    (4) (A) *If the student loan servicer is required to or voluntarily*
- 39    *reports to a consumer reporting agency, fail to accurately report*
- 40    *each borrower's payment performance to at least one consumer*

1 reporting agency that compiles and maintains files on consumers  
2 on a nationwide basis, upon acceptance as a data furnisher by  
3 that consumer reporting agency.

4 (B) For purposes of this paragraph, “consumer reporting  
5 agency that compiles and maintains files on consumers on a  
6 nationwide basis” has the same meaning as defined in the federal  
7 Fair Credit Reporting Act (15 U.S.C. Sec. 1681a(p)).

8 (5) Refuse to communicate with an authorized representative  
9 of the borrower who provides a written authorization signed by  
10 the borrower, provided the student loan servicer may adopt  
11 reasonable procedures for verifying that the representative is in  
12 fact authorized to act on behalf of the borrower and for protecting  
13 the borrower from fraud or abusive practices.

14 (6) Negligently or intentionally make a false statement or  
15 knowingly and willfully make an omission of a material fact in  
16 connection with information or reports filed with the department  
17 or another governmental agency.

18 (7) Engage in an unfair or deceptive practice toward a military  
19 borrower or misrepresent or omit material information in  
20 connection with the servicing of a student loan owed by a military  
21 borrower. For purposes of this paragraph, “misrepresent or omit  
22 material information” includes, but is not limited to:

23 (A) Misrepresenting or omitting the availability of a program  
24 or protection specific to military borrowers or applicable to  
25 military borrowers.

26 (B) A misrepresentation or omission in violation of paragraph  
27 (2) of this subdivision.

28 (8) Engage in an unfair or deceptive practice toward any  
29 borrower working in public service or misrepresent or omit  
30 material information in connection with the servicing of a student  
31 loan owed by a borrower working in public service. For purposes  
32 of this paragraph, “misrepresent or omit material information”  
33 includes, but is not limited to:

34 (A) Misrepresenting or omitting the availability of a program  
35 or protection specific to borrowers working in public service or  
36 applicable to those borrowers.

37 (B) A misrepresentation or omission in violation of paragraph  
38 (2).

39 (9) Engage in an unfair or deceptive practice toward an older  
40 borrower or older cosigner or misrepresent or omit material

1 *information in connection with the servicing of a student loan*  
2 *owed or cosigned by an older borrower. For purposes of this*  
3 *paragraph, “misrepresent or omit material information” includes,*  
4 *but is not limited to:*

5 (A) *Misrepresenting or omitting the availability of a program*  
6 *or protection specific to older borrowers or older cosigners or*  
7 *applicable to those borrowers or cosigners.*

8 (B) *Misrepresenting or omitting the older borrower’s or older*  
9 *cosigner’s obligations under the student loan.*

10 (C) *A misrepresentation or omission in violation of paragraph*  
11 *(2).*

12 (10) *Engage in an unfair or deceptive practice toward a*  
13 *borrower with a disability or misrepresent or omit material*  
14 *information in connection with the servicing of a student loan*  
15 *owed by a borrower with a disability. For purposes of this*  
16 *paragraph, “misrepresent or omit material information” includes,*  
17 *but is not limited to:*

18 (A) *Misrepresenting or omitting the availability of a program*  
19 *or protection specific to borrowers with disabilities or applicable*  
20 *to those borrowers.*

21 (B) *A misrepresentation or omission in violation of paragraph*  
22 *(2) of this subdivision.*

23

24 CHAPTER 2. SETTING CLEAR “RULES OF THE ROAD” FOR THE  
25 STUDENT LOAN INDUSTRY

26

27 1788.102. Except to the extent that this section is inconsistent  
28 with any provision of federal law or regulation, and then only to  
29 the extent of the inconsistency, ~~a person engaged in student loan~~  
30 ~~servicing in this state~~ *student loan servicer* shall do all of the  
31 following:

32 (a) Post, process, and credit student loan payments in a timely  
33 manner, in accordance with the following:

34 (1) A payment received on or before 11:59 p.m. on the date on  
35 which that payment is due, in the amount, manner, and location  
36 indicated by the person engaged in student loan servicing, shall  
37 be credited as effective on the date on which the payment was  
38 received by the person engaged in student loan servicing in this  
39 state. A person engaged in student loan servicing in this state shall

1 treat a payment received from the borrower on the borrower’s due  
 2 date as an “on-time” payment.

3 (2) If a person engaged in servicing a student loan makes a  
 4 material change in the mailing address, office, or procedures for  
 5 handling borrower payments, and that change causes a material  
 6 delay in the crediting of a borrower payment made during the  
 7 60-day period following the date on which that change took effect,  
 8 the person engaged in servicing the student loan shall not impose  
 9 on the borrower any negative consequences related to that material  
 10 change, including negative credit reporting, lost eligibility for a  
 11 borrower benefit, late fees, interest capitalization, or other financial  
 12 injury.

13 ~~(b) Apply an overpayment on a loan in a manner that is in the~~  
 14 ~~best financial interest of a student loan borrower, unless a borrower~~  
 15 ~~provides instructions to the contrary, consistent with subdivision~~  
 16 ~~(h) of Section 28130 of the Financial Code.~~

17 ~~(1) A student loan servicer shall be considered to meet the~~  
 18 ~~requirements of this subdivision if the servicer applies the~~  
 19 ~~overpayment to the highest interest-rate loan on the borrower’s~~  
 20 ~~account, unless the borrower specifies otherwise.~~

21 ~~(2) For purposes of this subdivision, “overpayment” means a~~  
 22 ~~payment on a student loan in excess of the monthly amount due~~  
 23 ~~from a borrower on a student loan, also commonly referred to as~~  
 24 ~~a prepayment.~~

25 ~~(e) Apply partial payments in a manner that minimizes late fees~~  
 26 ~~and negative credit reporting.~~

27 ~~(1) If there are multiple loans on a borrower’s account with an~~  
 28 ~~equal stage of delinquency, the person engaged in student loan~~  
 29 ~~servicing in this state shall satisfy the requirements of this~~  
 30 ~~subdivision by applying partial payments to satisfy as many loans~~  
 31 ~~as possible on a borrower’s account.~~

32 ~~(2) For purposes of this subdivision, “partial payment” means~~  
 33 ~~a payment on a student loan in an amount less than the monthly~~  
 34 ~~amount due from a borrower on a student loan, also commonly~~  
 35 ~~referred to as an underpayment.~~

36 ~~(b) (1) For purposes of this subdivision:~~

37 ~~(A) “Overpayment” means a payment on a student loan account~~  
 38 ~~in excess of the monthly amount due from a borrower on a student~~  
 39 ~~loan account, also commonly referred to as a prepayment.~~

1 (B) “Student loan account” means student loans owed by a  
2 borrower grouped together for billing purposes by a student loan  
3 servicer.

4 (2) Except as provided in federal law or required by a student  
5 loan agreement, comply with a direction provided by a borrower  
6 as to how to allocate an overpayment to a student loan account.  
7 A borrower’s direction on how to allocate an overpayment to a  
8 student loan account shall stay in effect for any future  
9 overpayments during the term of a student loan until the borrower  
10 provides different directions.

11 (3) In the absence of a direction provided by a borrower  
12 pursuant to paragraph (2) of this subdivision, allocate an  
13 overpayment on a student loan account in a manner that is in the  
14 best financial interest of a student loan borrower.

15 (4) A student loan servicer shall be considered to meet the  
16 requirements of paragraph (3) if the servicer allocates the  
17 overpayment to the loan with the highest interest rate on the  
18 borrower’s student loan account, unless the borrower specifies  
19 otherwise.

20 (c) (1) For purposes of this subdivision:

21 (A) “Partial payment” means a payment on a student loan  
22 account in an amount less than the monthly amount due from a  
23 borrower on the student loan account, also commonly referred to  
24 as an underpayment.

25 (B) “Student loan account” means student loans owed by a  
26 borrower grouped together for billing purposes by a student loan  
27 servicer.

28 (2) Except as provided in federal law or required by a student  
29 loan agreement, comply with a direction provided by a borrower  
30 as to how to allocate a partial payment to a student loan.

31 (3) In the absence of a direction provided by a borrower  
32 pursuant to paragraph (2) of this subdivision, allocate a partial  
33 payment in a manner that minimizes late fees and negative credit  
34 reporting.

35 (4) If there are multiple loans on a borrower’s student loan  
36 account at an equal stage of delinquency, the student loan servicer  
37 shall satisfy the requirement in paragraph (3) of this subdivision  
38 by allocating partial payments to satisfy as many loans as possible  
39 on a borrower’s student loan account.

- 1 (d) (1) If a ~~person engaged in student loan servicing~~ *student*  
2 *loan servicer* imposes a fee on a borrower for a past due student  
3 loan payment, that fee shall be reasonable and proportional to the  
4 total costs incurred as a result of the late payment by a borrower,  
5 and shall not exceed 6 percent of any amount past due.
- 6 (2) A ~~person engaged in servicing a student loan~~ *student loan*  
7 *servicer* shall not impose a minimum late fee. For purposes of this  
8 paragraph, “minimum late fee” includes any fee that is not assessed  
9 as a percentage of any amount past due.
- 10 (e) Diligently oversee its service providers. For purposes of this  
11 subdivision, “diligently oversee its service providers” includes  
12 maintaining policies and procedures to oversee compliance by  
13 third-party service providers engaged in any aspect of student loan  
14 servicing. Student loan servicers have joint and several liability  
15 for the conduct of their service providers for any act or practice  
16 that violates this title.
- 17 (f) (1) Timely process its paperwork, consistent with existing  
18 federal requirements, including, but not limited to, ensuring that  
19 customer service personnel have received both of the following:  
20 (A) Appropriate training about the handling of paperwork.  
21 (B) Access to necessary information about forms and  
22 applications that are in process, have been approved, or have been  
23 denied.
- 24 (2) The requirements of this subdivision include ensuring that  
25 customer service personnel have access to applications for  
26 income-driven repayment plans and other forms required to access  
27 benefits and protections for federal student loans, as described in  
28 Section 1070 and following of Title 20 of the United States Code.
- 29 (g) Maintain accurate records about ~~borrowers’ accounts~~ *a*  
30 *borrower’s account* and retain these records for the life of a student  
31 loan, unless otherwise prohibited by law.
- 32 (h) ~~Treat any inbound inquiry or complaint that cannot be~~  
33 ~~completed in a single phone call as a qualified request subject to~~  
34 ~~the same requirements and protections established for “qualified~~  
35 ~~written requests” under Section 28130 of the Financial Code, and~~  
36 ~~have policies and procedures permitting borrowers to escalate a~~  
37 ~~complaint or inquiry to a senior representative if the borrower is~~  
38 ~~dissatisfied with the outcome of the initial qualified request.~~

1 (h) Treat a qualified request as if it were a qualified written  
2 request and comply with subdivision (s) with respect to that  
3 qualified request.

4 (i) Maintain policies and procedures permitting a borrower  
5 who is dissatisfied with the outcome of an initial qualified request  
6 to escalate the borrower's concern to a supervisor.

7 (j)

8 (j) (1) Protect borrowers from any negative consequences that  
9 are directly related to the issue identified in a borrower's qualified  
10 request or qualified written request. ~~request until that request has~~  
11 ~~been resolved.~~ For purposes of this subdivision, "negative  
12 consequences" ~~includes, include, but is are~~ not limited to, negative  
13 credit reporting, lost eligibility for a borrower benefit, late fees,  
14 interest capitalization, or other financial injury. ~~This subdivision~~  
15 ~~applies to all "qualified requests," rather than only to "qualified~~  
16 ~~written requests" as described in Section 28130 of the Financial~~  
17 ~~Code.~~

18 (2) Notwithstanding paragraph (1), after receipt of a qualified  
19 request or qualified written request related to a dispute on a  
20 borrower's payment on a student loan, a student loan servicer  
21 shall not, for 60 days, furnish information to a consumer reporting  
22 agency regarding a payment that is the subject of the qualified  
23 request or the qualified written request.

24 (j)

25 (k) Protect borrowers from any negative consequences stemming  
26 from a sale, assignment, transfer, system conversion, or any  
27 payment made by the ~~transferor service, borrower to the original~~  
28 ~~student loan servicer~~ consistent with the ~~transferor service's~~  
29 ~~original student loan servicer's~~ policy. For purposes of this  
30 subdivision, "negative consequences" ~~includes, include, but is are~~  
31 not limited to, any of the following:

32 (1) Negative credit reporting.

33 (2) The imposition of late fees.

34 (3) Loss of or denial of eligibility for any benefit or protection  
35 established under federal law or included in a loan contract.

36 (l) If the sale, assignment, or other transfer of the servicing of  
37 a student loan results in a change in the identity of the party to  
38 whom the borrower is required to send payments or direct any  
39 communications concerning the student loan, the student loan  
40 servicer shall notify the borrower in writing at least 15 days before

- 1 *the borrower is required to send a payment on the student loan of*  
 2 *all of the following:*  
 3 *(1) The identity of the new student loan servicer and the number*  
 4 *of the license, issued by the commissioner, of the new student loan*  
 5 *servicer.*  
 6 *(2) The name and address of the new student loan servicer to*  
 7 *whom subsequent payments or communications are required to*  
 8 *be sent.*  
 9 *(3) The telephone numbers and internet websites of the new*  
 10 *student loan servicer.*  
 11 *(4) The effective date of the sale, assignment, or transfer.*  
 12 *(5) The date on which the current student loan servicer will stop*  
 13 *accepting payments on the borrower's student loan.*  
 14 *(6) The date on which the new student loan servicer will begin*  
 15 *accepting payments on the borrower's student loan.*  
 16 ~~(k)~~  
 17 *(m) Ensure all necessary information regarding a borrower, a*  
 18 *borrower's account, and a borrower's student loan accompanies*  
 19 *a loan when it transfers to a new person engaged in servicing the*  
 20 *borrower's student loan student loan servicer within 45 calendar*  
 21 *days of the effective date of the sale, assignment, or transfer,*  
 22 *consistent with Section 28134 of the Financial Code: transfer. For*  
 23 *purposes of this subdivision, "necessary information" shall include,*  
 24 *at minimum, all of the following:*  
 25 *(1) A schedule of all transactions credited or debited to the*  
 26 *student loan account.*  
 27 *(2) A copy of the promissory note for the student loan.*  
 28 *(3) Any notes created by ~~servicer~~ student loan servicer's*  
 29 *personnel reflecting communications with the borrower about the*  
 30 *student loan account.*  
 31 *(4) A report of the data fields relating to the borrower's student*  
 32 *loan account created by the ~~servicer's~~ student loan servicer's*  
 33 *electronic systems in connection with servicing practices.*  
 34 *(5) Copies of any information or documents provided by the*  
 35 *borrower to the ~~servicer~~ student loan servicer.*  
 36 *(6) Usable data fields with information necessary to assess*  
 37 *qualification for forgiveness, including public service loan*  
 38 *forgiveness.*  
 39 *(7) Any information necessary to compile a payment history.*  
 40 ~~(t)~~

1 (n) Provide specialized training for any customer service  
2 personnel that advises military borrowers about student loan  
3 repayment benefits and protections. ~~Under no circumstances shall~~  
4 ~~a person engage in any unfair or deceptive practice toward any~~  
5 ~~military borrower or misrepresent or omit any material information~~  
6 ~~in connection with the servicing of a student loan owed by a~~  
7 ~~military borrower. For purposes of this subdivision, “misrepresent~~  
8 ~~or omit any material information” includes, but is not limited to,~~  
9 ~~misrepresenting or omitting any of the following:~~

10 (1) ~~The availability of any program or protection specific to~~  
11 ~~military borrowers or applicable to military borrowers.~~

12 (2) ~~The amount, nature, or terms of any fee or payment due or~~  
13 ~~claimed to be due on a student loan.~~

14 (3) ~~The terms and conditions of the student loan agreement.~~

15 (4) ~~The borrower’s obligations under the student loan.~~

16 (m)

17 (o) Provide specialized training for any customer service  
18 personnel that advises borrowers working in public ~~service,~~  
19 ~~including teachers,~~ *service* about student loan repayment benefits  
20 and protections. ~~Under no circumstances shall a person engage in~~  
21 ~~any unfair or deceptive practice toward any borrower working in~~  
22 ~~public service or misrepresent or omit any material information~~  
23 ~~in connection with the servicing of a student loan owed by a~~  
24 ~~borrower working in public service. For purposes of this~~  
25 ~~subdivision, “misrepresent or omit any material information”~~  
26 ~~includes, but is not limited to, misrepresenting or omitting any of~~  
27 ~~the following:~~

28 (1) ~~The availability of any program or protection specific to~~  
29 ~~borrowers working in public service or applicable to those~~  
30 ~~borrowers.~~

31 (2) ~~The amount, nature, or terms of any fee or payment due or~~  
32 ~~claimed to be due on a student loan.~~

33 (3) ~~The terms and conditions of the student loan agreement.~~

34 (4) ~~The borrower’s obligations under the student loan.~~

35 (n)

36 (p) Provide specialized training for any customer service  
37 personnel that advises older borrowers about *risks specifically*  
38 *applicable to older borrowers to ensure that, once identified, older*  
39 *borrowers receive information regarding* student loan repayment  
40 benefits and protections, including disability discharge programs

1 for private and federal ~~loans~~, *loans* and cosigner release provisions  
 2 in private student loan contracts. ~~Under no circumstances shall a~~  
 3 ~~person engage in any unfair or deceptive practice toward any older~~  
 4 ~~borrower or cosigner or misrepresent or omit any material~~  
 5 ~~information in connection with the servicing of a student loan~~  
 6 ~~owed or cosigned by an older borrower. For purposes of this~~  
 7 ~~subdivision, “misrepresent or omit any material information”~~  
 8 ~~includes, but is not limited to, misrepresenting or omitting any of~~  
 9 ~~the following:~~

10 ~~(1) The availability of any program or protection specific to~~  
 11 ~~older borrowers or cosigners or applicable to those borrowers or~~  
 12 ~~cosigners.~~

13 ~~(2) The amount, nature, or terms of any fee or payment due or~~  
 14 ~~claimed to be due on a student loan.~~

15 ~~(3) The terms and conditions of the student loan agreement.~~

16 ~~(4) The borrower’s or cosigner’s obligations under the student~~  
 17 ~~loan.~~

18 ~~(o)~~

19 *(q)* Provide specialized training for any customer service  
 20 personnel that advises borrowers with disabilities about student  
 21 loan repayment benefits and protections, including disability  
 22 discharge programs for private and federal loans. Under no  
 23 circumstances shall a person engage in any unfair or deceptive  
 24 practice toward any borrower with a disability or misrepresent or  
 25 omit any material information in connection with the servicing of  
 26 a student loan owed by a borrower with a disability. For purposes  
 27 of this subdivision, “misrepresent or omit any material information”  
 28 includes, but is not limited to, misrepresenting or omitting any of  
 29 the following:

30 (1) The availability of any program or protection specific to  
 31 borrowers with disabilities or applicable to those borrowers.

32 (2) The amount, nature, or terms of any fee or payment due or  
 33 claimed to be due on a student loan.

34 (3) The terms and conditions of the student loan agreement.

35 (4) The borrower’s obligations under the student loan.

36 ~~(p)~~

37 *(r)* Respond within 15 calendar days to communications from  
 38 the Student Borrower Advocate, established pursuant to Chapter  
 39 4 (commencing with Section 1788.104), or within a shorter,

1 reasonable time as the Student Borrower Advocate may request  
2 in ~~their~~ *that person's* communication.

3 ~~(e) Comply with Sections 28130, 28134, and 28136 of the~~  
4 ~~Financial Code.~~

5 *(s) (1) Respond to a qualified written request by acknowledging*  
6 *receipt of the request within 10 business days and within 30*  
7 *business days, provide information relating to the request and, if*  
8 *applicable, either the action the student loan servicer will take to*  
9 *correct the account or an explanation for the position that the*  
10 *borrower's account is correct.*

11 *(2) The 30-day period described in paragraph (1) may be*  
12 *extended for not more than 15 days if, before the end of the 30-day*  
13 *period, the student loan servicer notifies the borrower of the*  
14 *extension and the reason for the delay in responding.*

15

16 CHAPTER 3. ENFORCEMENT OF THE STUDENT BORROWER BILL  
17 OF RIGHTS

18

19 1788.103. ~~(a) A person engaged in student loan servicing~~  
20 ~~student loan servicer~~ shall do both of the following:

21 (1) Comply with this title.

22 (2) Comply with all applicable federal laws relating to student  
23 loan servicing, as from time to time amended, and the regulations  
24 promulgated thereunder.

25 (b) Any consumer who suffers damage as a result of the failure  
26 of ~~a person engaged in student loan servicing~~ *student loan servicer*  
27 to comply with paragraph (1) or (2) of ~~this subdivision~~ *subdivision*  
28 *(a)* may bring an action on ~~their own~~ *that consumer's* behalf and  
29 on behalf of a similarly situated class of consumers against that  
30 ~~person~~ *student loan servicer* to recover or obtain any of the  
31 following:

32 (1) Actual damages, but in no case, shall the total award of  
33 damages ~~action~~ be less than five hundred dollars ~~(\$500)~~. *(\$500)*  
34 *per plaintiff, per violation.*

35 (2) An order enjoining the methods, acts, or practices.

36 (3) Restitution of property.

37 (4) Punitive damages.

38 (5) Attorney's fees.

39 (6) Any other relief that the court deems proper.

1 (c) In addition to any other remedies provided by this  
2 subdivision or otherwise provided by law, whenever it is proven  
3 by a preponderance of the evidence that a ~~person engaged in student~~  
4 ~~loan servicing~~ *student loan servicer* has engaged in conduct that  
5 substantially interferes with a borrower's right to an alternative  
6 payment arrangement; loan forgiveness, cancellation, or discharge;  
7 or any other financial benefit as established under the terms of a  
8 borrower's promissory note or under the Higher Education Act of  
9 1965 (20 U.S.C. Sec. 1070a et seq.), as from time to time amended,  
10 and the regulations promulgated thereunder, the court shall award  
11 treble actual damages to the plaintiff, but in no case shall the award  
12 of damages be less than one thousand five hundred dollars (\$1,500)  
13 per plaintiff, per violation.

14

15 CHAPTER 4. ESTABLISHMENT OF THE CALIFORNIA STUDENT  
16 BORROWER ADVOCATE TO STAND UP FOR THE RIGHTS OF STUDENT  
17 BORROWERS

18

19 1788.104. (a) Not later than 180 days following the operative  
20 date of this title, the commissioner shall designate a Student  
21 Borrower Advocate within the department to provide timely  
22 assistance to any student loan borrower with any student loan. The  
23 Student Borrower Advocate shall hire additional staff as necessary  
24 to implement this section.

25 (b) The Student Borrower Advocate shall receive and review  
26 complaints from student loan borrowers.

27 (c) Any complaint regarding a student loan servicer licensed or  
28 subject to licensing under the Student Loan Servicing Act (Division  
29 12.5 (commencing with Section 28100) of the Financial Code)  
30 shall be referred to the appropriate unit within the department.  
31 This unit may investigate complaints referred by the Student  
32 Borrower Advocate, and from the public, who may also submit  
33 complaints directly to the department.

34 (d) Complaints regarding student loan servicers not subject to  
35 licensing under the Student Loan Servicing Act (Division 12.5  
36 (commencing with Section 28100) of the Financial Code) shall be  
37 referred to the Department of Justice. The Department of Justice  
38 may investigate complaints regarding student loan servicers  
39 referred by the Student Borrower Advocate, and from the public,

1 who may also submit complaints directly to the Department of  
2 Justice.

3 (e) Complaints regarding any private postsecondary educational  
4 institution licensed by the Bureau for Private Postsecondary  
5 Education shall be referred to the Bureau for Private Postsecondary  
6 Education's Office of Student Assistance and Relief.

7 (f) The Student Borrower Advocate shall confer with ~~the~~  
8 ~~Department of Business Oversight,~~ the Department of ~~Justice,~~  
9 *Justice* and the Office of Student Assistance and Relief regarding  
10 the student loan servicing complaints, the proper referral processes  
11 for those complaints, and the reporting requirements of the Student  
12 Borrower Advocate under this title.

13 (g) The Student Borrower Advocate has all of the following  
14 duties:

15 (1) Compiling and analyzing data on student loan borrower  
16 complaints received and referred to the Department of Business  
17 Oversight and the Department of Justice.

18 (2) Assisting student loan borrowers in understanding their  
19 rights and responsibilities under the terms of student loans,  
20 including reviewing the complete student loan history for any  
21 student loan borrower who has provided written consent for the  
22 review.

23 (3) Providing information to the public, agencies, legislators,  
24 and others regarding the problems and concerns of student  
25 ~~education~~ loan borrowers and making recommendations for  
26 resolving those problems and concerns.

27 (4) Analyzing and monitoring the development and  
28 implementation of federal, state, and local laws, rules, regulations,  
29 and policies relating to student ~~education~~ loan borrowers and  
30 recommend any changes the student loan advocate deems  
31 necessary.

32 (5) Assessing the number of residents with federal student loans  
33 who have applied for, received, or are awaiting a decision on  
34 forgiveness or discharge of a student ~~education loan on a~~  
35 ~~comparable annual basis,~~ *loan*, subject to the availability of  
36 applicable data.

37 (6) Disseminating information concerning the availability of  
38 the Student Borrower Advocate to assist student loan borrowers  
39 and potential student loan borrowers, as well as institutions of

1 higher education, student loan servicers, and any other participant  
2 in student loan lending, with any student loan concerns.

3 (7) Taking any action reasonably calculated or intended to assist  
4 student loan borrowers, including providing assistance applying  
5 for forgiveness or discharge of a student loan and communicating  
6 with a student loan servicer to resolve a complaint received by the  
7 advocate from a student loan borrower.

8 (8) Requesting and compiling data provided by any student loan  
9 servicer if reasonably determined by the Student Borrower  
10 Advocate to be necessary to effectuate the duties described in this  
11 subdivision. If the Student Borrower Advocate determines it is  
12 necessary to compel the production of that data via examination  
13 or subpoena, the Department of Business Oversight shall coordinate  
14 with the Student Borrower Advocate to effectuate this production.

15 (9) Not later than 18 months after enactment of this title, and  
16 not less frequently than once per year thereafter, the Student  
17 Borrower Advocate shall submit a report to the appropriate  
18 committees of the Legislature having jurisdiction over higher  
19 education and financial institutions, including any  
20 recommendations the Student Borrower Advocate deems necessary.

21 The Student Borrower Advocate shall report on all of the following:

22 (A) The implementation of this section.

23 (B) The overall effectiveness of the Student Borrower Advocate.

24 (C) The types of complaints received regarding student loan  
25 borrowing, student loan repayment and servicing, and how these  
26 complaints are resolved.

27 (D) Other data and analysis on outstanding student loan issues  
28 faced by borrowers.

29 *(h) Notwithstanding subdivision (l) of Section 1788.100, for*  
30 *purposes of this chapter, “student loan servicer” includes a state*  
31 *or nonprofit private institution or organization having an*  
32 *agreement with the United States Secretary of Education under*  
33 *the Higher Education Act of 1965 (20 U.S.C. Sec. 1078(b)) in*  
34 *connection with its responsibilities as a guaranty agency engaged*  
35 *in default aversion.*

1 CHAPTER 5. SHINING A SPOTLIGHT ON STUDENT LOAN  
2 INDUSTRY PRACTICES  
3

4 1788.105. (a) The department shall monitor for risks to  
5 consumers in the provision of student loan servicing, including  
6 developments in the market for those services.

7 (b) In conducting any monitoring or assessment required by this  
8 section, the commissioner may gather information regarding the  
9 organization, business conduct, markets, and activities of ~~persons~~  
10 ~~engaged in student loan servicing~~; *student loan servicers*. The  
11 commissioner may enter into contracts to perform the duties  
12 required in this section, as necessary.

13 (c) In order to gather information described in subparagraph  
14 (b), the commissioner may do both of the following:

15 (1) Gather and compile information from a variety of sources,  
16 including examination reports concerning ~~persons engaged in~~  
17 ~~student loan servicing~~; *student loan servicers*, consumer  
18 complaints, voluntary surveys and voluntary interviews of  
19 consumers, surveys and interviews with ~~persons engaged in student~~  
20 ~~loan servicing~~ *student loan servicers* and service providers, and  
21 review of available databases.

22 (2) Require persons engaged in student loan servicing and  
23 licensed or subject to the licensing requirements of the Student  
24 Loan Servicing Act (Division 12.5 (commencing with Section  
25 28100) of the Financial Code) to file, under oath or otherwise, in  
26 the form and within a reasonable period of time as the  
27 commissioner may prescribe, annual or special reports, or answers  
28 in writing to specific questions, as necessary for the commissioner  
29 to fulfill the monitoring, assessment, and reporting responsibilities  
30 required in this title.

31 (d) (1) In addition to any other market monitoring activities  
32 deemed necessary by the commissioner, pursuant to subdivision  
33 (a), the department shall, not later than 180 days following the  
34 operative date of this title, gather and compile information from  
35 ~~persons engaged in student loan servicing~~ *student loan servicers*  
36 to assemble data substantially similar to the data collection  
37 proposed in the “Student Loan Market Monitoring” initiative  
38 described by the Consumer Financial Protection Bureau contained  
39 in Volume 82 of the Federal Register, Number 171, page 11440,  
40 dated September 6, 2017.

1 (2) The commissioner shall, on a quarterly basis, develop and  
 2 publicize metrics based on data collected pursuant to this  
 3 subdivision, and those metrics shall identify each ~~person engaged~~  
 4 ~~in student loan servicing~~ *student loan servicer* and publish relevant  
 5 metrics related to performance of student loan servicing by each  
 6 person. In executing the function described in this subdivision, the  
 7 department shall, not less than on a quarterly basis, meet and confer  
 8 with the Student Borrower Advocate established pursuant to  
 9 Chapter 4.

10 (e) *Notwithstanding subdivision (l) of Section 1788.100, for*  
 11 *purposes of this chapter, “student loan servicer” includes a state*  
 12 *or nonprofit private institution or organization having an*  
 13 *agreement with the United States Secretary of Education under*  
 14 *the Higher Education Act of 1965 (20 U.S.C. Sec. 1078(b)) in*  
 15 *connection with its responsibilities as a guaranty agency engaged*  
 16 *in default aversion.*

17 *SEC. 3. Section 28104 of the Financial Code is amended to*  
 18 *read:*

19 28104. For the purposes of this division, the following terms  
 20 have the following meanings:

21 (a) “Applicant” means a person applying for a license pursuant  
 22 to this division.

23 (b) “Borrower” means either of the following:

24 (1) A person who has received or agreed to pay a student loan.

25 (2) A person who shares responsibility for repaying a student  
 26 loan with a person described in paragraph (1).

27 (c) “Commissioner” means the Commissioner of Business  
 28 Oversight.

29 (d) “Default aversion” means those activities in which guaranty  
 30 agencies engage to prevent default by a borrower pursuant to the  
 31 law and regulations of the Federal Family Education Loan Program.

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

33 (f) “Engage in the business” means, without limitation, servicing  
 34 student loans.

35 (g) “In this state” means any activity of a person relating to  
 36 servicing student loans that originates from this state and is directed  
 37 to persons outside this state, or that originates from outside this  
 38 state and is directed to persons inside this state, or that originates  
 39 inside this state and is directed to persons inside this state.

40 (h) “Licensee” means a person licensed pursuant to this division.

1 (i) “Nationwide Multistate Licensing System & Registry” means  
2 a system of record, created by the Conference of State Bank  
3 Supervisors and the American Association of Residential Mortgage  
4 Regulators, for nondepository, financial services licensing or  
5 registration, including student loan servicers, in participating state  
6 agencies, the District of Columbia, Puerto Rico, the United States  
7 Virgin Islands, and Guam.

8 (j) “Person” means an individual, a corporation, a partnership,  
9 a limited liability company, an association, a trust, an  
10 unincorporated organization, a government, or a political  
11 subdivision of a government, and any other entity.

12 ~~(k) “Qualified written request” means a written correspondence~~  
13 ~~made by a borrower, other than notice on a payment medium~~  
14 ~~supplied by a licensee, that is transmitted by mail, facsimile, or~~  
15 ~~electronically through an email address or Internet Web site~~  
16 ~~designated by the licensee to receive communications from a~~  
17 ~~borrower that does all of the following:~~

18 ~~(1) Enables the licensee to identify the name and account of the~~  
19 ~~borrower.~~

20 ~~(2) Includes a statement of the reasons for the belief by the~~  
21 ~~borrower, to the extent applicable, that the account is in error or~~  
22 ~~that provides sufficient detail to the servicer regarding information~~  
23 ~~sought by the borrower, such as requesting a complete payment~~  
24 ~~history for the loan or the borrower’s account, a copy of the~~  
25 ~~borrower’s student loan promissory note, or the contact information~~  
26 ~~for the creditor to whom the borrower’s student loan is owed.~~

27 ~~(t)~~

28 (k) “Servicing” means any of the following activities related to  
29 a student loan of a borrower:

30 (1) Performing both of the following:

31 (A) Receiving any scheduled periodic payments from a borrower  
32 or any notification that a borrower made a scheduled periodic  
33 payment.

34 (B) Applying payments to the borrower’s account pursuant to  
35 the terms of the student loan or the contract governing the  
36 servicing.

37 (2) During a period when no payment is required on a student  
38 loan, performing both of the following:

39 (A) Maintaining account records for the student loan.

1 (B) Communicating with the borrower regarding the student  
 2 loan on behalf of the owner of the student loan promissory note.

3 (3) Interacting with a borrower related to that borrower’s student  
 4 loan, with the goal of helping the borrower avoid default on ~~his or~~  
 5 ~~her~~ *the borrower’s* student loan or facilitating the activities  
 6 described in paragraph (1) or (2).

7 ~~(m)~~

8 (l) (1) “Student loan” means any loan made solely for use to  
 9 finance a postsecondary education and costs of attendance at a  
 10 postsecondary institution, including, but not limited to, tuition,  
 11 fees, books and supplies, room and board, transportation, and  
 12 miscellaneous personal expenses. A “student loan” includes a loan  
 13 made to refinance a student loan.

14 (2) (A) A “student loan” shall not include an extension of credit  
 15 under an open-end consumer credit plan, a reverse mortgage  
 16 transaction, a residential mortgage transaction, or any other loan  
 17 that is secured by real property or a dwelling.

18 (B) A “student loan” shall not include an extension of credit  
 19 made by a postsecondary educational institution to a borrower if  
 20 one of the following applies:

21 (i) The term of the extension of credit is no longer than the  
 22 borrower’s education program.

23 (ii) The remaining, unpaid principal balance of the extension  
 24 of credit is less than \$1,500 at the time of the borrower’s graduation  
 25 or completion of the program.

26 (iii) The borrower fails to graduate or successfully complete ~~his~~  
 27 ~~or her~~ *the borrower’s* education program and has a balance due at  
 28 the time of ~~his or her~~ *the borrower’s* disenrollment from the  
 29 postsecondary institution.

30 ~~(n)~~

31 (m) “Student loan servicer” means any person engaged in the  
 32 business of servicing student loans. A “student loan servicer” does  
 33 not include a debt collector, as defined in Section 1788.2 of the  
 34 Civil Code, whose student loan debt collection business, and  
 35 business operations, involve collecting, or attempting to collect,  
 36 on defaulted student loans, that is, federal student loans for which  
 37 no payment has been received for 270 days or more, or private  
 38 student loans, in default, according to the terms of the loan  
 39 documents. Debt collectors who also service nondefaulted student

1 loans, as part of their business, and business operations, are  
2 “student loan servicers.”

3 ~~SEC. 3.~~

4 *SEC. 4.* Section 28106 of the Financial Code is amended to  
5 read:

6 28106. (a) The commissioner shall administer the provisions  
7 of this division and may promulgate rules and regulations and issue  
8 orders consistent with that authority.

9 (b) Without limitation, the functions, powers, and duties of the  
10 commissioner include all of the following:

11 (1) To issue or refuse to issue a license as provided by this  
12 division.

13 (2) To revoke or suspend for cause any license as provided by  
14 this division.

15 (3) To keep records of licenses issued under this division.

16 (4) To receive, consider, investigate, and act upon complaints  
17 made in connection with a licensee.

18 (5) To prescribe the forms of and receive (A) applications for  
19 licenses and (B) reports, books, and records required to be made  
20 by a licensee under this division, including annual audited financial  
21 statements.

22 (6) To subpoena documents and witnesses and compel their  
23 attendance and production, to administer oaths, and to require the  
24 production of books, papers, or other materials relevant to any  
25 inquiry authorized by this division.

26 (7) To require information with regard to an applicant that the  
27 commissioner may deem necessary, with regard for the paramount  
28 public interest in ascertaining the experience, background, honesty,  
29 truthfulness, integrity, and competency of an applicant for servicing  
30 student loans, and if an applicant is an entity other than an  
31 individual, in ascertaining the honesty, truthfulness, integrity, and  
32 competency of officers, directors, or managing members of the  
33 corporation, association, or other entity, or the general partners of  
34 a partnership.

35 (8) To enforce by order any provision of this division.

36 (9) To levy fees, fines, and charges in an amount sufficient to  
37 cover the cost of the services performed in administering this  
38 division.

1 (10) To appoint examiners, attorneys, supervisors, experts, and  
2 special assistants as needed to effectively and efficiently administer  
3 this division.

4 (c) The commissioner shall administer the provisions of Title  
5 1.6C.10 (commencing with Section 1788.100 of the Civil Code)  
6 governing the rights of student loan borrowers.

7 *SEC. 5. Section 28130 of the Financial Code is amended to*  
8 *read:*

9 28130. A licensee shall do all of the following:

10 (a) Develop policies and procedures reasonably intended to  
11 promote compliance with this division.

12 (b) File with the commissioner any report required by the  
13 commissioner.

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

16 (d) Submit to periodic examination by the commissioner as  
17 required by this division and any regulation or order of the  
18 commissioner.

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

21 (f) Provide, free of charge on its ~~Internet Web site~~, *internet*  
22 *website* information or links to information regarding repayment  
23 and loan forgiveness options that may be available to borrowers  
24 and provide this information or these links to borrowers via written  
25 correspondence or email at least once per calendar year.

26 ~~(g) (1) Respond to a qualified written request by acknowledging~~  
27 ~~receipt of the request within 10 business days and within 30~~  
28 ~~business days, provide information relating to the request and, if~~  
29 ~~applicable, the action the licensee will take to correct the account~~  
30 ~~or an explanation for the licensee's position that the borrower's~~  
31 ~~account is correct.~~

32 ~~(2) The 30-day period described in paragraph (1) may be~~  
33 ~~extended for not more than 15 days if, before the end of the 30-day~~  
34 ~~period, the licensee notifies the borrower of the extension and the~~  
35 ~~reasons for the delay in responding.~~

36 ~~(3) After receipt of a qualified written request related to a dispute~~  
37 ~~on a borrower's payment on a student loan, a licensee shall not,~~  
38 ~~for 60 days, furnish adverse information to any consumer reporting~~  
39 ~~agency regarding any payment that is the subject of the qualified~~  
40 ~~written request.~~

1 ~~(h) (1) Except as provided in federal law or required by a~~  
2 ~~student loan agreement, a licensee shall inquire of a borrower how~~  
3 ~~to apply an overpayment to a student loan. A borrower's direction~~  
4 ~~on how to apply an overpayment to a student loan shall stay in~~  
5 ~~effect for any future overpayments during the term of a student~~  
6 ~~loan until the borrower provides different directions.~~

7 ~~(2) For purposes of this subdivision, "overpayment" means a~~  
8 ~~payment on a student loan in excess of the monthly amount due~~  
9 ~~from a borrower on a student loan, also commonly referred to as~~  
10 ~~a prepayment.~~

11 *SEC. 6. Section 28134 of the Financial Code is repealed.*

12 ~~28134. (a) If the sale, assignment, or other transfer of the~~  
13 ~~servicing of a student loan results in a change in the identity of the~~  
14 ~~party to whom the borrower is required to send payments or direct~~  
15 ~~any communications concerning the student loan the licensee shall~~  
16 ~~notify the borrower in writing at least 15 days before the borrower~~  
17 ~~is required to send a payment on the student loan of all of the~~  
18 ~~following:~~

19 ~~(1) The identity of the new student loan servicer and the number~~  
20 ~~of the license of the new student loan servicer issued by the~~  
21 ~~commissioner.~~

22 ~~(2) The name and address of the new student loan servicer to~~  
23 ~~whom subsequent payments or communications are required to~~  
24 ~~be sent.~~

25 ~~(3) The telephone numbers and Internet Web sites of the new~~  
26 ~~student loan servicer.~~

27 ~~(4) The effective date of the sale, assignment, or transfer.~~

28 ~~(5) The date on which the licensee, as the current student loan~~  
29 ~~servicer, will stop accepting payments on the borrower's student~~  
30 ~~loan.~~

31 ~~(6) The date on which the new student loan servicer will begin~~  
32 ~~accepting payments on the borrower's student loan.~~

33 ~~(b) A licensee shall transfer all information regarding a~~  
34 ~~borrower, a borrower's account, and a borrower's student loan to~~  
35 ~~the new licensee servicing the borrower's student loan within 45~~  
36 ~~calendar days of the effective date of the sale, assignment, or~~  
37 ~~transfer.~~

38 *SEC. 7. Section 28136 of the Financial Code is repealed.*

39 ~~28136. The licensee shall not do any of the following:~~

1 ~~(a) Directly or indirectly employ any scheme, device, or artifice~~  
2 ~~to defraud or mislead a borrower.~~

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

10 ~~(c) Misapply payments made by a borrower to the outstanding~~  
11 ~~balance of a student loan.~~

12 ~~(d) If the licensee is required to or voluntarily reports to a~~  
13 ~~consumer reporting agency, fail to accurately report each~~  
14 ~~borrower’s payment performance to at least one consumer reporting~~  
15 ~~agency that compiles and maintains files on consumers on a~~  
16 ~~nationwide basis, upon acceptance as a data furnisher by that~~  
17 ~~consumer reporting agency. For purposes of this subdivision, a~~  
18 ~~consumer reporting agency that compiles and maintains files on~~  
19 ~~consumers on a nationwide basis is one that meets the definition~~  
20 ~~in Section 603(p) of the federal Fair Credit Reporting Act (15~~  
21 ~~U.S.C. Sec. 1681a(p)).~~

22 ~~(e) Refuse to communicate with an authorized representative~~  
23 ~~of the borrower who provides a written authorization signed by~~  
24 ~~the borrower, provided the licensee may adopt reasonable~~  
25 ~~procedures for verifying that the representative is in fact authorized~~  
26 ~~to act on behalf of the borrower and for protecting the borrower~~  
27 ~~from fraud or abusive practices.~~

28 ~~(f) Negligently or intentionally make any false statement or~~  
29 ~~knowingly and willfully make any omission of a material fact in~~  
30 ~~connection with any information or reports filed with the~~  
31 ~~commissioner, the department, or another governmental agency.~~

32 ~~SEC. 4.~~

33 *SEC. 8.* No reimbursement is required by this act pursuant to  
34 Section 6 of Article XIII B of the California Constitution because  
35 the only costs that may be incurred by a local agency or school  
36 district will be incurred because this act creates a new crime or  
37 infraction, eliminates a crime or infraction, or changes the penalty  
38 for a crime or infraction, within the meaning of Section 17556 of  
39 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

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