

By: Powell

S.B. No. 1859

A BILL TO BE ENTITLED

AN ACT

1
2 relating to regulating the servicing of certain student loans,
3 requiring the occupational licensing of certain student loan
4 servicers, and the designation of a student loan ombudsman within
5 the Texas Department of Banking; authorizing fees; authorizing
6 civil and administrative penalties.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

8 SECTION 1. Section 52.335(d), Education Code, is amended to
9 read as follows:

10 (d) The disclosure required under this section must:

11 (1) identify the types of education loans included in
12 the institution's estimates; and

13 (2) include:

14 (A) a statement that the disclosure is not a
15 complete and official record of the student's education loan debt;

16 (B) an explanation regarding why the disclosure
17 may not be complete or accurate, including an explanation that for a
18 transfer student, the institution's estimates regarding state
19 loans reflect only state loans incurred by the student for
20 attendance at the institution; ~~and~~

21 (C) a statement that the institution's estimates
22 are general in nature and are not intended as a guarantee or
23 promise; and

24 (D) the contact information for the student loan

1 ombudsman designated under Section 161.051, Finance Code.

2 SECTION 2. Subtitle E, Title 3, Finance Code, is amended by
3 adding Chapter 161 to read as follows:

4 CHAPTER 161. STUDENT LOAN SERVICERS

5 SUBCHAPTER A. GENERAL PROVISIONS

6 Sec. 161.001. DEFINITIONS. In this chapter:

7 (1) "Banking commissioner" means the banking
8 commissioner of Texas or a person designated by the banking
9 commissioner and acting under the banking commissioner's direction
10 and authority.

11 (2) "Consumer reporting agency" has the meaning
12 assigned by Section 20.01(5), Business & Commerce Code.

13 (3) "Department" means the Texas Department of
14 Banking.

15 (4) "Finance commission" means the Finance Commission
16 of Texas.

17 (5) "Nationwide Multistate Licensing System and
18 Registry" or "registry" has the meaning assigned by Section
19 151.2031.

20 (5) "Ombudsman" means the student loan ombudsman
21 designated under Section 161.051.

22 (7) "Servicing" means:

23 (A) receiving scheduled periodic payments from a
24 student loan borrower or notification of those payments;

25 (B) applying student loan payments to the
26 borrower's account under the terms of:

27 (i) the loan; or

1 (ii) the contract governing the servicing
2 of the loan;

3 (C) maintaining, on the loan holder's behalf,
4 account records for a student loan during a period when no loan
5 payment is required;

6 (D) communicating with the student loan borrower
7 regarding the loan, on the loan holder's behalf; and

8 (E) interacting with a student loan borrower to
9 facilitate the servicing of the student loan, as described by
10 Paragraphs (A)-(D), including performing activities to prevent the
11 loan's default and the default of any obligations arising from the
12 loan.

13 (8) "Student loan" means a loan that is extended to a
14 student loan borrower solely to finance postsecondary education
15 expenses. The term does not include open-end credit or a loan
16 secured by real property.

17 (9) "Student loan borrower" or "borrower" means:

18 (A) a student who has obtained or agreed to pay a
19 student loan;

20 (B) a former student with a student loan; or

21 (C) a person who has obtained or agreed to pay a
22 student loan for the benefit of a student, regardless of whether the
23 student is currently enrolled at a postsecondary educational
24 institution.

25 (10) "Student loan servicer" means an entity
26 responsible for servicing a student loan.

27 Sec. 161.002. RULES. The finance commission shall adopt

1 rules necessary to administer, implement, and enforce this chapter.

2 SUBCHAPTER B. STUDENT LOAN OMBUDSMAN

3 Sec. 161.051. STUDENT LOAN OMBUDSMAN. (a) The banking
4 commissioner shall designate a qualified employee of the department
5 as student loan ombudsman to provide assistance to student loan
6 borrowers in this state and to other persons as provided by this
7 subchapter. Subject to the availability of funds, the department
8 may hire additional staff as necessary to assist the ombudsman in
9 carrying out the ombudsman's duties and performing the activities
10 specified by this subchapter.

11 (b) The ombudsman and the banking commissioner shall confer
12 at least annually regarding:

13 (1) student loan servicer complaints;

14 (2) the proper referral process for student loan
15 servicer complaints; and

16 (3) the reporting requirement of Section 161.054.

17 Sec. 161.052. DUTIES OF OMBUDSMAN. The ombudsman shall:

18 (1) receive, review, and attempt to resolve complaints
19 from student loan borrowers, including the attempted resolution of
20 complaints in collaboration with institutions of higher education,
21 student loan servicers, and any other participants in the student
22 loan lending process;

23 (2) refer to the banking commissioner any complaint
24 received concerning a student loan servicer;

25 (3) compile and analyze data on complaints made by
26 student loan borrowers;

27 (4) assist student loan borrowers in understanding the

1 borrower's rights and responsibilities under the terms of a student
2 loan or related contract;

3 (5) provide information to the public, state agencies,
4 the legislature, and other interested persons regarding the
5 problems and concerns of student loan borrowers and make
6 recommendations to the banking commissioner for resolving those
7 problems and concerns;

8 (6) analyze and monitor the development and
9 implementation of federal and state law and policy relating to
10 student loans and recommend any necessary changes to the banking
11 commissioner;

12 (7) review the complete student loan history of a
13 student loan borrower who has provided written consent for the
14 review;

15 (8) disseminate information concerning the
16 availability of the ombudsman to assist the following with respect
17 to student loan servicing matters or concerns:

18 (A) student loan borrowers and potential student
19 loan borrowers;

20 (B) institutions of higher education;

21 (C) student loan servicers; and

22 (D) other participants in student loan lending in
23 this state; and

24 (9) take other actions as necessary to fulfill the
25 duties of the ombudsman as provided by this subchapter.

26 Sec. 161.053. EDUCATION COURSE FOR STUDENT LOAN BORROWERS.

27 Not later than October 1, 2022, the ombudsman, in consultation with

1 the Texas Higher Education Coordinating Board, shall establish and
2 maintain a student loan borrower education course. The course must
3 include educational presentations and materials regarding student
4 loans, including information regarding:

- 5 (1) lending terms;
- 6 (2) loan documentation requirements;
- 7 (3) monthly payment obligations;
- 8 (4) income-driven repayment options;
- 9 (5) loan forgiveness programs; and
- 10 (6) disclosure requirements.

11 Sec. 161.054. ANNUAL REPORT. Not later than December 31 of
12 each year, the ombudsman shall submit an annual report to the
13 banking commissioner and the commissioner of the Texas Higher
14 Education Coordinating Board. The report must:

- 15 (1) address the implementation of this subchapter;
- 16 (2) address the effectiveness of the ombudsman
17 position in providing the types of assistance described by this
18 subchapter; and
- 19 (3) contain recommendations for department action to
20 improve the regulation of student loan servicers under this
21 chapter.

22 SUBCHAPTER C. STUDENT LOAN SERVICER LICENSE

23 Sec. 161.101. STUDENT LOAN SERVICER LICENSE REQUIRED. (a)
24 Except as provided by Subsection (b), a person may not act, directly
25 or indirectly, as a student loan servicer in this state unless the
26 person is licensed under this subchapter.

27 (b) The following persons are exempt from licensure under

1 this subchapter:

2 (1) a financial institution as defined by Section
3 201.101;

4 (2) a wholly owned subsidiary of a bank or credit
5 union; and

6 (3) an operating subsidiary in which each owner of the
7 subsidiary is wholly owned by the same bank or credit union.

8 Sec. 161.102. APPLICATION AND ACCOMPANYING FEE. (a) An
9 application for a student loan servicer license must be:

10 (1) in writing;

11 (2) under oath; and

12 (3) on the form prescribed by the banking
13 commissioner.

14 (b) Except as provided by Section 161.106, an applicant for
15 a student loan servicer license must:

16 (1) submit a completed application together with the
17 payment of applicable fees through the Nationwide Multistate
18 Licensing System and Registry; and

19 (2) provide a recent financial statement and any other
20 information required by the banking commissioner.

21 (c) An application for a student loan servicer license must
22 be accompanied by:

23 (1) a nonrefundable license fee of \$5,000 or other
24 amount determined by the banking commissioner; and

25 (2) a nonrefundable investigation fee in an amount
26 determined by the banking commissioner.

27 Sec. 161.103. CRIMINAL AND OTHER BACKGROUND CHECKS. (a) An

1 applicant for a student loan servicer license shall provide, in the
2 form and manner prescribed by the banking commissioner and
3 acceptable to the Nationwide Multistate Licensing System and
4 Registry, information concerning the applicant's identity,
5 including:

6 (1) fingerprints for submission to the Federal Bureau
7 of Investigation and any governmental agency or entity authorized
8 to receive the information to conduct a state and national criminal
9 background check; and

10 (2) personal history and experience information in a
11 form prescribed by the Nationwide Multistate Licensing System and
12 Registry, including the submission of authorization for the
13 Nationwide Multistate Licensing System and Registry and the
14 commissioner to obtain:

15 (A) an independent credit report obtained from a
16 consumer reporting agency; and

17 (B) information related to any administrative,
18 civil, or criminal findings by a governmental jurisdiction.

19 (b) For purposes of this section and to reduce the points of
20 contact that the Federal Bureau of Investigation may have to
21 maintain for purposes of Subsection (a)(1), the banking
22 commissioner may use the Nationwide Multistate Licensing System and
23 Registry as a channeling agent for requesting information from and
24 distributing information to the United States Department of
25 Justice, any governmental agency, or any other source at the
26 banking commissioner's direction.

27 (c) For purposes of this section and to reduce the points of

1 contact that the banking commissioner may have to maintain for
2 purposes of Subsection (a) or (b), the commissioner may use the
3 Nationwide Multistate Licensing System and Registry as a channeling
4 agent for requesting information from and distributing information
5 to and from any source as directed by the banking commissioner.

6 Sec. 161.104. ABANDONMENT OF APPLICATION. (a) The banking
7 commissioner may consider an application for a license abandoned if
8 the applicant fails to respond to a request for information
9 required under this subchapter. The commissioner shall notify the
10 applicant, in writing, that if the applicant fails to submit the
11 requested information not later than the 60th day after the date of
12 the request, the application is considered abandoned.

13 (b) The banking commissioner is not required to refund an
14 application filing fee paid before the date an application is
15 considered abandoned under this section.

16 (c) Abandonment of an application under this section does
17 not preclude the applicant from submitting a new application for a
18 license under Section 161.102.

19 Sec. 161.105. ISSUANCE OF LICENSE. (a) On submission of
20 an application for an initial license and the payment of the license
21 fee and investigation fee under Section 161.102, the banking
22 commissioner shall investigate the financial condition and
23 responsibility, financial and business experience, character, and
24 general fitness of the applicant.

25 (b) The banking commissioner shall issue a license if:

26 (1) the commissioner finds that:

27 (A) the applicant's financial condition is

1 sound;

2 (B) the applicant meets the prescribed
3 qualifications; and

4 (C) the applicant's business will be conducted
5 fairly and lawfully, according to state and federal law, and in a
6 manner commanding the confidence and trust of the community;

7 (2) the commissioner has no knowledge that:

8 (A) the applicant or a person on the applicant's
9 behalf knowingly has made any incorrect statement of a material
10 fact in the application, or in a report or statement made under this
11 chapter; and

12 (B) the applicant or a person on the applicant's
13 behalf knowingly has omitted a material fact necessary to give the
14 banking commissioner any information required by the commissioner;
15 and

16 (3) the applicant has satisfied all other requirements
17 for licensure.

18 (c) Not more than one place of business may be maintained
19 under the same license, but the banking commissioner may issue more
20 than one license to the same license holder on compliance with the
21 provisions of this chapter as to each new license.

22 Sec. 161.106. AUTOMATIC ISSUANCE OF LIMITED LICENSE FOR
23 CERTAIN SERVICERS. (a) The banking commissioner shall
24 automatically issue, in accordance with this section, a limited
25 license to an applicant who:

26 (1) is servicing a student loan in this state under a
27 contract with the United States Department of Education under 20

1 U.S.C. Section 1087f; and

2 (2) meets the requirements of this section.

3 (b) An applicant for a license under this section:

4 (1) is exempt from the application procedures
5 established under Section 161.102, other than the requirement of
6 Section 161.102(c);

7 (2) is exempt from the requirements of Subchapter D if
8 the applicant is only servicing federal student loans in this
9 state; and

10 (3) is subject to and must comply with Subchapter D,
11 if the person is also servicing nonfederal student loans in this
12 state.

13 (c) The finance commission by rule shall prescribe the
14 procedures to document eligibility for the issuance of a license
15 under this section.

16 (d) Not later than the seventh day after the date on which a
17 license holder issued a limited license under this section receives
18 notice of the expiration, revocation, or termination of a contract
19 awarded to the license holder by the United States secretary of
20 education under 20 U.S.C. Section 1087f, the license holder shall
21 send written notice of that fact to the banking commissioner. To
22 continue to service student loans in this state, the license holder
23 must satisfy all requirements for licensure under this subchapter
24 not later than the 30th day after the date the license holder
25 received notice of the contract's expiration, revocation, or
26 termination, unless the license holder also holds a license under
27 this subchapter to service nonfederal student loans in this state.

1 If the license holder fails to satisfy the licensure requirements
2 before the expiration of the period prescribed by this subsection,
3 the commissioner shall immediately suspend the limited license
4 issued to the holder under this section.

5 (e) If the servicing of a student loan in this state is not
6 conducted by a person under a contract awarded by the United States
7 secretary of education under 20 U.S.C. Section 1087f, this section
8 does not prevent the banking commissioner from issuing an order to
9 temporarily or permanently prohibit the person from acting as a
10 student loan servicer.

11 (f) Unless otherwise prohibited by federal law, if the
12 servicing of a student loan is conducted by a person under a
13 contract awarded by the United States secretary of education under
14 20 U.S.C. Section 1087f, this section does not prevent the banking
15 commissioner from issuing a cease and desist order or injunction
16 against the student loan servicer to cease activities in violation
17 of this chapter.

18 Sec. 161.107. TERM OF LICENSE. A license issued under
19 Section 161.105 expires at the close of business on December 31 of
20 the year of issuance, unless the license is renewed, surrendered,
21 suspended, or revoked under this subchapter or Subchapter D.

22 Sec. 161.108. LICENSE RENEWAL. (a) The banking
23 commissioner may renew a student loan servicer license on or before
24 the license's expiration date if the student loan servicer submits
25 an application containing all required documents and accompanying
26 fees as provided by Section 161.102.

27 (b) Any renewal application submitted after December 1 must

1 be accompanied by a late fee of \$100 per day.

2 (c) The banking commissioner may not renew a license until
3 the commissioner receives the license fee, investigation fee, and
4 any applicable late fees and the applicable fees described by
5 Section 161.102(b)(1) are paid to the registry. If an application
6 for a renewal license is submitted on or before the date the license
7 expires, the license sought to be renewed continues in full force
8 and effect until the banking commissioner issues the renewal
9 license or until the commissioner notifies the license holder in
10 writing of the commissioner's refusal to issue the renewal license
11 together with the grounds on which that refusal is based. The
12 banking commissioner may refuse to issue a renewal license on any
13 ground on which the commissioner might refuse to issue an initial
14 license.

15 Sec. 161.109. CHANGE IN INFORMATION PROVIDED IN
16 APPLICATION. An applicant or license holder shall notify the
17 banking commissioner, in writing, of any change in the information
18 provided in the applicant's initial application for a license or
19 the applicant's most recent renewal application for the license, as
20 applicable, not later than the 10th business day after the date of
21 the occurrence of the event that results in the information
22 becoming inaccurate.

23 Sec. 161.110. SURRENDER OF LICENSE. (a) Not later than the
24 15th day after the date a license holder ceases to engage in the
25 business of student loan servicing in this state for any reason, the
26 license holder shall provide written notice of surrender to the
27 banking commissioner and shall surrender to the commissioner the

1 license holder's license for each location in which the license
2 holder has ceased to engage in business. The written notice of
3 surrender must identify the location where the records of the
4 license holder will be stored and the name, address, and telephone
5 number of an individual authorized to provide access to the
6 records.

7 (b) The surrender of a license does not reduce or eliminate
8 the license holder's civil or criminal liability arising from an
9 act or omission occurring before the surrender of the license,
10 including any administrative action taken by the banking
11 commissioner to:

- 12 (1) revoke or suspend a license;
13 (2) assess an administrative penalty; or
14 (3) exercise any other authority provided to the
15 commissioner.

16 Sec. 161.111. NAME AND LOCATION ON LICENSE. A license
17 issued under Section 161.105 must state:

- 18 (1) the name of the license holder; and
19 (2) the address of the office from which the servicing
20 of the student loans is to be conducted by the license holder.

21 Sec. 161.112. CHANGE OF LOCATION. Not later than the 31st
22 day before the date of the change, a license holder must notify the
23 department in writing of the license holder's intent to change the
24 location of the license holder's place of business.

25 Sec. 161.113. TRANSFER OR ASSIGNMENT OF LICENSE. A license
26 under this subchapter is not transferable or assignable.

27 SUBCHAPTER D. LICENSE REVOCATION AND SUSPENSION AND OTHER ACTIONS

AGAINST LICENSE HOLDERS

1 Sec. 161.151. INSPECTIONS; INVESTIGATIONS. (a) The
2 banking commissioner may conduct inspections of a student loan
3 servicer licensed under this chapter as the commissioner determines
4 necessary to determine whether the student loan servicer is
5 complying with this chapter and applicable rules. The inspections
6 may include inspection of the books, records, documents,
7 operations, and facilities of the student loan servicer and access
8 to any documents required under rules adopted under this chapter.
9 The commissioner may share evidence of criminal activity gathered
10 during an inspection or investigation with any state or federal law
11 enforcement agency.

12 (b) On the signed written complaint of a person, the banking
13 commissioner shall investigate the actions and records of a student
14 loan servicer licensed under this chapter if the complaint, or the
15 complaint and documentary or other evidence presented in connection
16 with the complaint, provides reasonable cause. The commissioner,
17 before commencing an investigation, shall notify the student loan
18 servicer in writing of the complaint and that the commissioner
19 intends to investigate the matter.

20 (c) For reasonable cause, the banking commissioner at any
21 time may investigate a student loan servicer licensed under this
22 chapter to determine whether the student loan servicer is complying
23 with this chapter and applicable rules.

24 (d) The banking commissioner may conduct an undercover or
25 covert investigation only if the commissioner, after due
26 consideration of the circumstances, determines that the
27

1 investigation is necessary to prevent immediate harm and to carry
2 out the purposes of this chapter.

3 (e) The finance commission by rule shall provide guidelines
4 to govern an inspection or investigation, including rules to:

5 (1) determine the information and records to which the
6 banking commissioner may demand access during an inspection or an
7 investigation; and

8 (2) establish what constitutes reasonable cause for an
9 investigation.

10 (f) Information obtained by the banking commissioner during
11 an inspection or investigation is confidential unless disclosure of
12 the information is permitted or required by other law.

13 (g) The banking commissioner may share information gathered
14 during an inspection or investigation with any state or federal
15 agency.

16 (h) The banking commissioner may require reimbursement of
17 expenses for each examiner for on-site examination or investigation
18 of a license holder if records are located out of state or if the
19 review is considered necessary beyond the routine examination
20 process. The finance commission by rule shall set the maximum
21 amount for the reimbursement of expenses authorized under this
22 subsection.

23 Sec. 161.152. ISSUANCE AND ENFORCEMENT OF SUBPOENA. (a)
24 During an investigation, the banking commissioner may issue a
25 subpoena that is addressed to a peace officer of this state or other
26 person authorized by law to serve citation or perfect service. The
27 subpoena may require a person to give a deposition, produce

1 documents, or both.

2 (b) If a person disobeys a subpoena or if a person appearing
3 in a deposition in connection with the investigation refuses to
4 testify, the banking commissioner may petition a district court in
5 Travis County to issue an order requiring the person to obey the
6 subpoena, testify, or produce documents relating to the matter.
7 The court shall promptly set an application to enforce a subpoena
8 issued under Subsection (a) for hearing and shall cause notice of
9 the application and the hearing to be served upon the person to whom
10 the subpoena is directed.

11 Sec. 161.153. SUSPENSION, REVOCATION, OR REFUSAL TO RENEW
12 LICENSE. (a) The banking commissioner may suspend, revoke, or
13 refuse to renew a license issued under Section 161.105, or may take
14 any other action, if the commissioner finds that:

15 (1) the license holder has violated this chapter or a
16 rule adopted under this chapter; or

17 (2) a fact or condition exists that, if the fact or
18 condition had existed at the time of the original application for
19 the license, clearly would have warranted a denial of the license.

20 (b) The banking commissioner may not abate a license fee if
21 the license is surrendered, revoked, or suspended before the
22 expiration of the period for which the license was issued.

23 Sec. 161.154. CIVIL PENALTY; INJUNCTIVE RELIEF. (a) A
24 person who violates this chapter is liable to this state for a civil
25 penalty in an amount not to exceed:

26 (1) \$10,000 for the first violation; and

27 (2) \$20,000 for the second violation and each

1 subsequent violation.

2 (b) Whenever it appears to the banking commissioner that a
3 person has violated, is violating, or is about to violate this
4 chapter or a rule adopted under this chapter, or that a license
5 holder, or an owner, director, officer, member, partner,
6 shareholder, trustee, employee, or agent of a license holder, has
7 committed fraud, engaged in an unauthorized activity, or made a
8 misrepresentation, the attorney general, on behalf of the banking
9 commissioner, may bring a civil action to:

- 10 (1) enjoin the violation or potential violation;
11 (2) recover a civil penalty under this section; or
12 (3) enjoin the violation or potential violation,
13 recover a civil penalty, or both.

14 (c) The attorney general is entitled to recover reasonable
15 expenses incurred in obtaining injunctive relief, recovering civil
16 penalties, or both, under this section, including reasonable
17 attorney's fees and court costs.

18 Sec. 161.155. SURETY BOND. (a) A license holder shall
19 file with the banking commissioner a surety bond obtained from a
20 surety company authorized to do business in this state.

21 (b) The bond must be:

22 (1) in an amount of at least \$30,000, as determined by
23 the finance commission; and

24 (2) in favor of:

25 (A) this state for the benefit of a person
26 damaged by a violation of this chapter; and

27 (B) a person damaged by a violation of this

1 chapter.

2 (c) When an action is brought on a license holder's bond,
3 the banking commissioner may require the filing of a new bond.
4 Immediately on recovery on any action on the bond, the license
5 holder shall file a new bond.

6 SUBCHAPTER E. REPORTING AND OTHER REQUIREMENTS; PENALTIES

7 Sec. 161.201. FAILURE TO COMPLY WITH FEDERAL LAW; VIOLATION
8 OF CHAPTER. A violation of the Truth in Lending Act (15 U.S.C.
9 Section 1601 et seq.) or any other federal law or regulation
10 relating to the servicing of a student loan is considered a
11 violation of this chapter, and a basis on which the banking
12 commissioner may take enforcement action under Section 161.153 or
13 161.154.

14 Sec. 161.202. REPORTS; ADMINISTRATIVE PENALTY FOR FAILURE
15 TO FILE. (a) Not later than December 1 of each year, a license
16 holder shall file a sworn report with the banking commissioner that
17 contains any information the commissioner may require concerning
18 the business conducted by the license holder in this state during
19 the preceding calendar year. The report must be made in the form
20 and manner prescribed by the banking commissioner.

21 (b) A license holder shall submit to the Nationwide
22 Multistate Licensing System and Registry:

23 (1) a student loan servicer call report of condition,
24 in the form and manner and as frequently as required by the
25 registry, that must include any other information required by the
26 registry; and

27 (2) any other report to, or through, the registry

1 under an arrangement for reporting and sharing information as
2 required by law.

3 (c) A license holder violates this chapter if the license
4 holder negligently makes a false statement or knowingly makes an
5 omission of material fact in connection with a report or
6 information filed with:

7 (1) the banking commissioner;

8 (2) the Nationwide Multistate Licensing System and
9 Registry; or

10 (3) a federal or state agency through the Nationwide
11 Multistate Licensing System and Registry.

12 (d) A license holder that fails to comply with Subsection
13 (a) or (b) is subject to:

14 (1) an administrative penalty in an amount not to
15 exceed \$100 for each day of noncompliance; and

16 (2) the revocation or suspension of the license
17 holder's license under Section 161.153.

18 (e) In determining the amount of the administrative penalty
19 under Subsection (d)(1), the banking commissioner must consider:

20 (1) the seriousness of the violation, including the
21 nature, circumstances, extent, and gravity of the violation;

22 (2) the person's history of previous violations;

23 (3) the amount necessary to deter a future violation;

24 and

25 (4) any other matter that justice may require.

26 (f) The banking commissioner may collect the penalty in the
27 same manner that a money judgment is enforced in district court.

1 Sec. 161.203. ANNUAL FEE. A license holder shall pay to the
2 banking commissioner an annual fee in an amount set by rule of the
3 finance commission. The fee must be in an amount sufficient to
4 cover the annual costs of implementing and enforcing this chapter.

5 SUBCHAPTER F. CONDUCT OF STUDENT LOAN SERVICES BUSINESS;

6 PROHIBITED ACTS

7 Sec. 161.251. STUDENT LOAN SERVICER TO CONDUCT BUSINESS
8 UNDER NAME AND LOCATION ON LICENSE. (a) A license holder may not
9 conduct business under this chapter under a name other than the name
10 stated on the license.

11 (b) A license holder may not conduct business under this
12 chapter at a location other than the address stated on the license.

13 Sec. 161.252. MAINTENANCE AND AVAILABILITY OF STUDENT LOAN
14 RECORDS. (a) To the extent allowed under federal law and unless a
15 different retention period is prescribed by federal law, a licensed
16 student loan servicer and a person exempt from licensure under
17 Section 161.101(b) shall maintain adequate records of each student
18 loan transaction, as prescribed by the department, for at least two
19 years after the earlier of:

20 (1) the date of the final student loan payment; or

21 (2) if the student loan is assigned, the date of
22 assignment.

23 (b) Not later than the fifth business day after the date the
24 banking commissioner requests to examine a record of a student loan
25 transaction, the student loan servicer shall:

26 (1) make the record available to the commissioner for
27 inspection; or

1 (2) send the commissioner a copy of the requested
2 record by:

3 (A) registered or certified mail, return receipt
4 requested; or

5 (B) an express delivery carrier that provides a
6 proof of delivery receipt.

7 (c) The banking commissioner may grant a license holder an
8 extension of time to comply with a record request under Subsection
9 (b).

10 Sec. 161.253. RESPONSE TO ACCOUNT INQUIRY; APPLICATION OF
11 CERTAIN PAYMENTS. (a) Except as otherwise provided under federal
12 law, a student loan servicer, on receipt of a written account
13 inquiry from a borrower or the borrower's representative, shall:

14 (1) acknowledge receipt of the inquiry within 10
15 business days;

16 (2) provide information in response to the inquiry,
17 and, if applicable:

18 (A) the action to be taken to correct the
19 account; or

20 (B) an explanation of the position taken by the
21 loan servicer that the borrower's account is correct;

22 (3) inquire about how to apply any overpayment made by
23 the borrower to the loan account;

24 (4) apply partial payments made by the borrower in a
25 manner that minimizes late fees and negative credit reporting; and

26 (5) evaluate the borrower for eligibility for an
27 income-driven repayment program that may be available before

1 placing the borrower in forbearance or default.

2 (b) A student loan servicer must provide information in
3 response to a written account inquiry described by Subsection
4 (a)(2) not later than the 30th business day after the date of
5 receipt of the inquiry.

6 (c) An instruction from the borrower or the borrower's
7 representative on how to apply an overpayment to a student loan
8 under Subsection (a)(3) remains in effect during the term of the
9 loan until the borrower or the borrower's representative provides
10 different instructions. For purposes of this section,
11 "overpayment," with respect to a student loan, means payment in an
12 amount that is more than the monthly amount due.

13 (d) If there are multiple loans on a borrower's account with
14 an equal stage of delinquency, a student loan servicer shall
15 satisfy the requirements of Subsection (a)(4) by applying partial
16 payments to satisfy as many individual loan payments as possible on
17 a borrower's account. For purposes of this section, "partial
18 payment," with respect to an account that contains multiple
19 individual student loans, means payment in an amount that is less
20 than the amount necessary to satisfy the outstanding payments due
21 on all of the individual student loans in the borrower's account.

22 Sec. 161.254. SALE OR OTHER TRANSFER OF LOAN SERVICING. (a)
23 If a sale, assignment, or other transfer of the servicing of a
24 student loan results in a change in the identity of the student loan
25 servicer to which a student loan borrower is required to send loan
26 payments or direct any communications concerning the loan, the
27 student loan servicer must:

1 (1) require, as a condition of the sale, assignment,
2 or other transfer, that the new student loan servicer honor and
3 preserve the availability of all benefits originally represented as
4 being available to the borrower during the term of the loan,
5 including any benefits for which the borrower has not yet
6 qualified;

7 (2) transfer to the new student loan servicer all
8 information regarding:

9 (A) the borrower; and

10 (B) the borrower's student loan and loan account,
11 including:

12 (i) the repayment status of the borrower;
13 and

14 (ii) any benefits associated with the loan;

15 (3) complete the transfer of information required
16 under Subdivision (2) not later than the 45th calendar day after the
17 date of the sale, assignment, or other transfer of the servicing of
18 the loan; and

19 (4) complete the sale, assignment, or other transfer
20 of the servicing of the loan not later than the seventh calendar day
21 before the date on which the next loan payment becomes due.

22 (b) If a student loan servicer obtains the right to service
23 a student loan, the loan servicer shall adopt policies and
24 procedures to verify that the loan servicer has received the
25 information specified in Subsection (a)(2).

26 Sec. 161.255. PROHIBITED ACTIONS. A student loan servicer
27 may not:

- 1 (1) directly or indirectly employ any scheme, device,
2 or artifice to defraud or mislead student loan borrowers;
- 3 (2) engage in any unfair or deceptive practice toward
4 any person or misrepresent or omit any material information in
5 connection with the servicing of a student loan, including
6 misrepresenting:
- 7 (A) the amount, nature, or terms of any fee or
8 payment due or claimed to be due on the loan;
- 9 (B) the terms of the loan agreement; or
- 10 (C) the borrower's obligations under the loan;
- 11 (3) obtain property by fraud or misrepresentation;
- 12 (4) misapply loan payments to the outstanding student
13 loan balance;
- 14 (5) provide inaccurate information to a consumer
15 reporting agency;
- 16 (6) fail to report, at least annually, both the
17 favorable and unfavorable payment history of the student loan
18 borrower to a nationally recognized consumer reporting agency if
19 the student loan servicer regularly reports payment history
20 information to consumer reporting agencies;
- 21 (7) refuse to communicate with an authorized
22 representative of the student loan borrower who provides a written
23 authorization signed by the borrower, provided the student loan
24 servicer adopts reasonable procedures to verify that the
25 representative is in fact authorized to act on the borrower's
26 behalf;
- 27 (8) make any false statement or knowingly and wilfully

1 make any omission of a material fact in connection with:

2 (A) information or a report filed with a
3 governmental agency; or

4 (B) an investigation conducted by the banking
5 commissioner or another governmental agency;

6 (9) fail to respond within 15 business days to
7 communications from the department, or within a shorter, reasonable
8 period as may be requested by the department; or

9 (10) fail to respond within 15 business days to a
10 consumer complaint submitted to the student loan servicer by the
11 department, except that, if necessary, the student loan servicer
12 may request an extension of time, not to exceed 45 business days, to
13 respond to the complaint, if the request is accompanied by an
14 explanation on why granting an extension of time is reasonable and
15 necessary.

16 SUBCHAPTER G. STUDENT LOAN BORROWER REMEDIES

17 Sec. 161.301. ACTIONS AND COUNTERCLAIMS BY BORROWER. (a) A
18 student loan borrower who suffers an ascertainable loss of money as
19 a result of an action taken, omission made, or practice employed by
20 a student loan servicer in violation of this chapter or a rule
21 adopted under this chapter may bring an action or assert a
22 counterclaim in court against the student loan servicer.

23 (b) In an action brought under this section, the court, in
24 addition to awarding any other appropriate legal or equitable
25 relief, may award an amount not to exceed three times the actual
26 damages sustained by the student loan borrower. The court may also
27 award reasonable attorney's fees, filing fees, and reasonable costs

1 of suit.

2 Sec. 161.302. REMEDIES NOT EXCLUSIVE. The remedies
3 provided by this chapter are not exclusive. A student loan borrower
4 is not required to exhaust administrative remedies established
5 under this chapter or any other applicable law before proceeding
6 under this chapter.

7 SECTION 3. As soon as practicable after the effective date
8 of this Act, the Finance Commission of Texas shall adopt rules as
9 necessary to implement Chapter 161, Finance Code, as added by this
10 Act.

11 SECTION 4. The initial report required by Section 161.054,
12 Finance Code, as added by this Act, must be submitted not later than
13 the first anniversary of the date the first student loan ombudsman
14 is designated to serve in that capacity.

15 SECTION 5. Notwithstanding Chapter 161, Finance Code, as
16 added by this Act, a student loan servicer is not required to hold a
17 license under that chapter to act as a student loan servicer in this
18 state before June 1, 2022.

19 SECTION 6. (a) Except as provided by Subsection (b) of this
20 section, this Act takes effect September 1, 2021.

21 (b) The following provisions take effect June 1, 2022:

22 (1) Sections 161.101, 161.106, 161.251, and 161.252,
23 Finance Code, as added by this Act; and

24 (2) Subchapters D and E, Finance Code, as added by this
25 Act.