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STATE OF NEW JERSEY
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SYNOPSIS

Provides for appointment of Student Loan Ombudsman and regulates student loan servicers.

CURRENT VERSION OF TEXT

As reported by the Assembly Higher Education Committee on June 6, 2019, with amendments.

AN ACT ¹[establishing the Office of the] concerning the appointment of a¹ Student Loan Ombudsman ¹[and] ¹,¹ regulating student loan servicers ¹, amending P.L.2005, c.1991,¹ and supplementing Title 17 of the Revised Statutes.

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

1. ¹(New section)¹ As used in this act:

"Commissioner" means the Commissioner of Banking and Insurance.

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

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

"Servicing" means: ¹[(1)]

a. ¹ receiving any scheduled periodic payments from a student loan borrower ¹[pursuant to the terms of a student education loan; (2) applying the payments of principal and interest and other payments with respect to the amounts received from a student loan borrower, as may be required pursuant to the terms of a student education loan; and (3) performing other administrative services with respect to a student education loan.] or notification of such payments, and applying payments to the borrower's account pursuant to the terms of the student education loan or the contract governing the servicing of the loan;

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

c. interacting with a student loan borrower to facilitate the loan servicing as described in this definition, including activities to help prevent loan default on obligations arising from a student education loan.¹

"Student education loan" means ¹[any loan primarily for personal use to finance education] a loan that is extended to a student loan borrower expressly to finance postsecondary education expenses¹ or other school-related expenses¹ and shall not include open-end credit or any loan secured by real property.¹

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

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

2. ¹(New section)¹ ¹[There is created within the Department of Banking and Insurance the Office of the Student Loan Ombudsman. The ombudsman shall be appointed by the Governor with the advice and consent of the Senate and shall serve at the pleasure of the Governor during the Governor's term of office. The ombudsman shall not hold any other office, position, or employment outside of the position of ombudsman. Any vacancy occurring in the position of ombudsman shall be filled in the same manner as the

original appointment. If the ombudsman shall be unable for any reason to serve the full term of office, the Governor may designate an acting ombudsman until a successor is appointed and qualified.]

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

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

3. ¹(New section)¹ a. The ¹commissioner shall ensure that the¹ ombudsman ¹[shall]¹ :

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

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

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

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

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

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

(7) disseminate information concerning the availability of the Student Loan Ombudsman to assist student loan borrowers and potential student loan borrowers, ¹[as well as public] including disseminating the information to¹ institutions of higher education, student loan servicers, and any other participant in student education loan lending, with any student loan servicing concerns; and

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

b. No later than October 1, ¹[2019] 2020¹, the ¹commissioner shall ensure that the¹ Student Loan Ombudsman ¹[, in consultation with the commissioner, shall] and the Higher Education Student Assistance Authority¹ establish and maintain a student loan borrower education course that shall include educational presentations and materials regarding student education loans. The program shall include, but not be limited to, key loan terms, documentation requirements, monthly payment obligations, income-based repayment options, loan forgiveness, and disclosure requirements.

c. No later than ¹[January 1, 2019] 12 months following the date of appointment of the ombudsman pursuant to section 2 of this act¹, and annually thereafter, the ¹[commissioner] Student Loan Ombudsman¹ shall submit a report to the ¹[standing committees of the General Assembly and Senate having cognizance of matters relating to banking and higher education] Commissioner of Banking and Insurance and the Secretary of Higher Education¹. The ¹[commissioner] ombudsman¹ shall report on: (1) the implementation of this section; (2) the overall effectiveness of the Student Loan Ombudsman position; and (3) additional steps that need to be taken for the Department of Banking and Insurance to gain regulatory control over the licensing and enforcement of student loan servicers.

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

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

b. Any person seeking to act within this State as a student loan servicer shall make a written application to the commissioner for an initial license in the form prescribed by the commissioner ¹utilizing the Nationwide Mortgage Licensing System and Registry¹. The application shall be accompanied by:

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

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

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

(3) a nonrefundable license fee of ¹[\$1,000; and] \$5,000;¹

(4) a nonrefundable investigation fee ¹[of \$800] in such amount as determined by the commissioner;
and

(5) a fee paid to the Nationwide Mortgage Licensing System and Registry as established by that entity¹

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

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

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

- (1) the applicant's financial condition is sound;
- (2) the applicant's business will be conducted honestly, fairly, equitably, carefully and efficiently within the purposes and intent of this act, and in a manner commanding the confidence and trust of the community;
- (3) (a) if the applicant is an individual, the individual is in all respects properly qualified and of good character;
- (b) if the applicant is a partnership, each partner is in all respects properly qualified and of good character;
- (c) if the applicant is a corporation or association, the president, chairperson of the executive committee, senior officer responsible for the corporation's business and chief financial officer or any other person who performs similar functions as determined by the commissioner, each director, each trustee and each shareholder owning 10 percent or more of each class of the securities of the corporation is in all respects properly qualified and of good character; or
- (d) if the applicant is a limited liability company, each member is in all respects properly qualified and of good character;
- (4) neither the applicant nor any person on behalf of the applicant knowingly has made any incorrect statement of a material fact in the application, or in any report or statement made pursuant to this act;
- (5) neither the applicant nor any person on behalf of the applicant knowingly has omitted to state any material fact necessary to give the commissioner any information lawfully required by the commissioner;
- (6) the applicant has paid the investigation fee and the license fee required under subsection b. of this section; and
- (7) the applicant has met any other similar requirements as determined by the commissioner.

d. A license issued pursuant to subsection c. of this section shall expire at the close of business on ¹[September 30] December 31¹ of the ¹[odd-numbered]¹ year ¹[following] of¹ its issuance, unless renewed or earlier surrendered, suspended or revoked pursuant to this act. Not later than 15 days after a licensee ceases to engage in the business of student loan servicing in this State for any reason, including a business decision to terminate operations in this State, license revocation, bankruptcy or voluntary dissolution, the licensee shall provide written notice of surrender to the commissioner and shall surrender to the commissioner its license for each location in which the licensee has ceased to engage in business. The written notice of surrender shall identify the location where the records of the licensee will be stored and the name, address and telephone number of an individual authorized to provide access to the records. The surrender of a license does not reduce or eliminate the licensee's civil or criminal liability arising from acts or omissions occurring prior to the surrender of the license, including any administrative actions undertaken by the commissioner to revoke or suspend a license, assess a civil penalty, order restitution or exercise any other authority provided to the commissioner.

e. A license may be renewed for the ensuing ¹[24] 12¹ month period upon the filing of an application containing all required documents and fees as provided in subsection b. of this section. The renewal application shall be filed on or before ¹[September] December¹ 1 of the year in which the license expires.

Any renewal application filed with the commissioner after ¹[September] December¹ 1 shall be accompanied

by a ¹[\$100]¹ late fee ¹of \$100 per day. A license will not be renewed until the license fee and any applicable late fees have been received¹. If an application for a renewal license has been filed with the commissioner on or before the date the license expires, the license sought to be renewed shall continue in full force and effect until the issuance by the commissioner of the renewal license applied for or until the commissioner has notified the licensee in writing of the commissioner's refusal to issue the renewal license together with the grounds upon which that refusal is based. The commissioner may refuse to issue a renewal license on any ground on which the commissioner might refuse to issue an initial license.

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

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

^{15.} (New section) The commissioner shall automatically issue a limited, irrevocable license to any person servicing a student loan under contract with the United States Department of Education as follows:

a. Any person seeking to act within this State as a student loan servicer is exempt from the application procedures established pursuant to subsection b. of section 4 of this act, other than the requirements of paragraph (3) and paragraph (4), to the extent that the student loan servicing performed in this State is conducted pursuant to a contract awarded by the United States Secretary of Education under 20 U.S.C. s.1087f. The procedure to document eligibility for the exemption shall be prescribed by the commissioner.

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

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

d. Any person issued a license pursuant to this section shall provide the commissioner with written notice within seven days following the notification of the expiration, revocation, or termination of any contract awarded by the United States Secretary of Education under 20 U.S.C s.1087f. The person shall have 30 days to satisfy all requirements established under this act in order to continue to act within this State as a student loan servicer unless the person is also licensed to service non-federal loans in New

Jersey. At the expiration of the 30-day period, if the person has not satisfied the requirements established pursuant to this act, the commissioner shall immediately suspend any license granted under this section.

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

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

¹[5.] 6. (New section) a.¹ No person licensed to act within this State as a student loan servicer shall do so under any other name or at any other place of business than that named in the license. Any change of location of a place of business of a licensee shall require prior written notice to the commissioner. Not more than one place of business shall be maintained under the same license but the commissioner may issue more than one license to the same licensee upon compliance with the provisions of this act as to each new licensee. A license shall not be transferable or assignable.

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

¹[6.] 7. (New section)¹ a. ¹[Each] Except as otherwise required pursuant to federal law, a federal student education loan agreement, or a contract between the federal government and a licensee, each¹ student loan servicer licensee and persons exempt from licensure pursuant to paragraph (2) of subsection a. of section 4 of this act shall maintain adequate records of each student education loan transaction for not less than two years following the final payment on that student education loan or the assignment of that student education loan, whichever occurs first ¹[, or any longer period as may be required by any other provision of law]¹.

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

18. (New section) Except as otherwise provided pursuant to federal law, federal student education loan agreements, or a contract between the federal government and a student loan servicer, a student loan servicer shall:

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

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

(2) providing information relating to the inquiry, and, if applicable, the action the student loan servicer will take to correct the account, or an explanation of the student loan servicer's position that the borrower's account is correct, within 30 business days.

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

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

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

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

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

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

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

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

f. A student loan servicer shall evaluate a student loan borrower for eligibility for an income-driven repayment program prior to placing the borrower in forbearance or default, if an income-driven repayment program is available to the borrower.¹

¹[7.] 9. (New section)¹ No student loan servicer shall:

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

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

c. obtain property by fraud or misrepresentation;

d. ¹[knowingly]¹ misapply ¹[or recklessly apply]¹ student education loan payments to the outstanding balance of a student education loan;

e. ¹[knowingly or recklessly]¹ provide inaccurate information to a credit bureau, thereby harming a student loan borrower's creditworthiness;

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

g. refuse to communicate with an authorized representative of the student loan borrower who provides a written authorization signed by the student loan borrower, provided the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower; ¹[or]¹

h. ¹[negligently]¹ make any false statement or knowingly and willfully make any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the commissioner or another governmental agency ¹;

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

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

¹[8.] 10. (New section)¹ a. In addition to any authority provided under Title 17 of the Revised Statutes, the commissioner shall have the authority to conduct investigations and examinations as follows:

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

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

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

c. ¹[In order to carry out the purposes of this section] When making an examination or investigation under this act¹, the commissioner may:

(1) retain attorneys, ¹appraisers, independent actuaries, independent certified public¹ accountants or other professionals and specialists as examiners, ¹[auditors or investigators to conduct or assist in the conduct of examinations or investigations] the cost of which shall be borne by the company which is the subject of the examination or investigation¹ ;

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

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

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

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

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

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

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

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

(2) Any person who violates any provision of this act shall be liable, in a civil action brought by the commissioner in a court of competent jurisdiction, for a penalty of not more than ¹[\$5,000] \$10,000¹ for the first violation, ¹[\$10,000] and \$20,000¹ for the second ¹[violation and \$15,000 for] and¹ each subsequent ¹[violation] offense¹. The penalty shall be paid to the commissioner to be used in accordance with this act and shall be collected pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The court shall also award court costs and reasonable attorneys' fees to the commissioner.

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

¹13. (New section) The remedies provided in this act are not intended to be the exclusive remedies available to a student loan borrower, and a student loan borrower shall not be required to exhaust administrative remedies established pursuant to this act or any other applicable law prior to proceeding under this act.¹

¹[10.] 14. (New section)¹ A student loan servicer shall comply with all applicable federal laws and regulations relating to student loan servicing, including, but not limited to, the "Truth in Lending Act" (15 U.S.C. s.1601 et seq.). In addition to any other remedies provided by law, a violation of any federal law or regulation shall be deemed a violation of this section and a basis upon which the commissioner may take enforcement action pursuant to section ¹[9] 11¹ of this act.

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

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

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

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

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

16. (New section) Student loan servicer licensees shall be assessed annually an amount sufficient to cover annual costs of the implementation of this act. Assessments shall be effectuated in accordance with

P.L.2005, c.199 (C.17:1C-33 et seq.) as amended by P.L. _____, c. _____ (C. _____) (pending before the Legislature as this bill), and its implementing rules. Moneys collected from license fees, inspections, or violations pursuant to this act shall be expended by the commissioner for the purpose of administering the provisions of this act.¹

¹17. Section 2 of P.L.2005, c.199 (C.17:1C-34) is amended to read as follows.

2. For the purposes of this act:

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

"Commissioner" means the Commissioner of Banking and Insurance.

"Department" means the Department of Banking and Insurance.

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

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

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

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

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

"Regulated entity" means a depository institution, other financial entity or person chartered, licensed or registered by the Division of Banking or who should be chartered, licensed or registered.¹

(cf: P.L.2019, c.65, s.21)

¹[12.] 18. (New section)¹ The Commissioner of Banking and Insurance shall, in accordance with the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), adopt the rules and regulations necessary to implement the provisions of this act.

¹19. (New section) If any provision of this act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity shall not affect other provisions or any other application of this act which can be given effect without the invalid provision or application, and for this purpose the provisions of this act are declared severable.¹

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