

Assembly Bill No. 376

Passed the Assembly August 30, 2020

Chief Clerk of the Assembly

Passed the Senate August 28, 2020

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2020, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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 Sections 28104, 28112, 28130, and 28140 of, and to repeal Sections 28134 and 28136 of, the Financial Code, relating to student loans.

LEGISLATIVE COUNSEL'S DIGEST

AB 376, 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. The act requires an applicant for a license to submit audited financial statements prepared in accordance with generally accepted accounting principles and acceptable to the commissioner that indicate a net worth of at least \$250,000 and requires a licensee to maintain a minimum net worth of \$250,000.

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 authorize the commissioner to allow a licensee that is a wholly owned subsidiary of a public holding company required to comply with the requirements of the Securities and Exchange Commission to satisfy the requirement to submit audited financial statements with an application for a license and to maintain a minimum net worth of \$250,000 by submitting the annual consolidated audited financial statements filed with the Securities and Exchange Commission, as specified.

This bill would impose new requirements on 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 financial interest of a student loan borrower, as defined, applying partial payments to minimize late fees and negative credit reporting, maintaining records, timely processing of paperwork, and diligently overseeing service providers. The bill would require a student loan servicer to provide specialized training for customer service personnel that advises military borrowers, borrowers in public service, borrowers with disabilities, and older borrowers. The bill would prohibit a student loan servicer from engaging in 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 as well as all applicable federal laws relating to student loan servicing 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 require a consumer to give specified notice to a person before bringing an action for damages against that person for a violation of the bill's provisions and would provide that person an opportunity to cure the alleged violation, as specified. The bill would prohibit an attempt to cure a violation by a person who receives a notice of that violation from being admissible in court against that person but would authorize the attempt to cure to be admitted as evidence by that person, as specified. The bill would define terms for purposes of its provisions.

The bill would require, beginning on July 1, 2021, the commissioner, as specified, to designate a Student Loan Ombudsman to work within the department and to hire additional staff, as needed to implement these provisions. The bill would require the Student Loan Ombudsman 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 Loan Ombudsman to confer with the Department of 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 Loan Ombudsman 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 types of complaints received, and other data and analysis on student loan issues.

The bill would also, beginning July 1, 2021, authorize the Commissioner 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 student loan services. The bill would authorize the commissioner to gather and compile information from 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 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 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.

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) California faces a student debt crisis. Across California, more than 3.7 million borrowers owe nearly \$125 billion in student

debt—more than \$33,000 on average. In 2017 alone, more than one million Americans defaulted on a student loan nationwide—three times the number who lost homes to foreclosure over this period.

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

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

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

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

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

(7) The State of California has an opportunity and an obligation to act. In 2016, California passed the Student Loan Servicing Act, requiring all student loan servicers to obtain licenses to operate in

California and to be subject to routine oversight by the Department of Business Oversight. This is a critical first step to protect California student loan borrowers' rights.

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

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

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

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

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

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

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

TITLE 1.6C.10. STUDENT LOANS: BORROWER RIGHTS

CHAPTER 1. STUDENT BORROWER BILL OF RIGHTS

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

(a) "Borrower" means either of the following:

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

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

(b) "Borrower with disabilities" means a borrower who a student loan servicer knows, or reasonably should know, is a person who has a disability, as defined in Section 54.

(c) “Borrower working in public service” means a borrower who a student loan servicer knows, or reasonably should know, is employed in a public service job, as defined in the Higher Education Act (20 U.S.C. Sec. 1087e(m)) and its implementing regulations.

(d) “Commissioner” means the Commissioner of Business Oversight.

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

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

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

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

(i) “Military borrower” means any of the following:

(1) A borrower who is one of the following:

(A) A servicemember as defined in the Servicemember Civil Relief Act (50 U.S.C. Sec. 3911).

(B) Self-identifies as a service member when interacting with a student loan servicer.

(C) Is a service member as defined in Section 400 of the Military and Veterans Code.

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

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

(j) “Older borrower” means a borrower who a student loan servicer knows, or reasonably should know, is a senior citizen, as defined in Section 51.3.

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

(l) “Partial payment” means a payment on a student loan account in an amount less than the current amount due from a borrower on the student loan account, also commonly referred to as an underpayment.

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

(n) “Qualified request” means any inbound telephone call, the subject of which cannot be resolved in a single phone call, made by a borrower to a student loan servicer in which either the borrower requests specific information from the student loan servicer or reports what the borrower believes to be an error regarding the borrower’s account.

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

(1) Enables the student loan servicer to identify the name and account of the borrower.

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

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

(1) Performing both of the following:

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

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

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

(A) Maintaining account records for the student loan.

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

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

(q) (1) "Student loan" means any loan made solely for use to finance a postsecondary education and costs of attendance at a postsecondary institution, including, but not limited to, tuition, fees, books and supplies, room and board, transportation, and miscellaneous personal expenses. A "student loan" includes a loan made to refinance a student loan.

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

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

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

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

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

(r) "Student loan account" means student loans owed by a borrower grouped together for billing purposes by a student loan servicer.

(s) "Student loan servicer" means any person engaged in the business of servicing student loans in this state. A "student loan servicer" does not include any of the following:

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

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

(3) A federally chartered credit union.

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

(2) An act or practice is abusive in connection with the servicing of a student loan, if the act or practice does either of the following:

(A) Materially interferes with the ability of a borrower to understand a term or condition of a student loan.

(B) Takes unreasonable advantage of any of the following:

(i) A lack of understanding on the part of a borrower of the material risks, costs, or conditions of the student loan.

(ii) The inability of a borrower to protect the interests of the borrower when selecting or using either of the following:

(I) A student loan.

(II) A feature, term, or condition of a student loan.

(iii) The reasonable reliance by the borrower on a person engaged in servicing a student loan to act in the interests of the borrower.

(3) Abusive acts and practices include, but are not limited to, those described in paragraph (2).

(b) A student loan servicer shall not do any of the following:

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

(2) Engage in an unfair or deceptive practice toward a borrower or misrepresent or omit material information in connection with the servicing of a student loan, including, but not limited to, misrepresenting the amount, nature, or terms of a fee or payment due or claimed to be due on a student loan, the terms and conditions of the student loan agreement, or the borrower's obligations under the student loan.

(3) Misapply payments made by a borrower to the outstanding balance of a student loan.

(4) (A) If the student loan servicer is required to or voluntarily reports to a consumer reporting agency, fail to accurately report each borrower's payment performance to at least one consumer reporting agency that compiles and maintains files on consumers

on a nationwide basis, upon acceptance as a data furnisher by that consumer reporting agency.

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

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

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

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

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

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

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

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

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

(9) Engage in an unfair or deceptive practice toward an older borrower or older cosigner or misrepresent or omit material information in connection with the servicing of a student loan

owed or cosigned by an older borrower. For purposes of this paragraph, “misrepresent or omit material information” includes, but is not limited to:

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

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

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

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

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

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

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

1788.102. Except to the extent that this section is inconsistent with any provision of federal law or regulation, and then only to the extent of the inconsistency, a student loan servicer shall do all of the following:

(a) Post and process student loan payments in a timely manner pursuant to the servicer’s established payment processing policies that shall be disclosed to and readily accessible by borrowers and credit student loan payments in a timely manner in accordance with the following:

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

treat a payment received from the borrower on the borrower's due date as an "on-time" payment.

(2) If a payment is made by check, credit the payment on the date the check was received by the student loan servicer regardless of the date of processing. A borrower's online account shall reflect payments made within three business days of the date of payment unless payment is made by check and contains no information identifying to which account or loan the payment should be credited. In the event the student loan servicer receives a paper check with no information identifying to which account or loan the payment should be credited, the student loan servicer shall determine, within 10 business days, to which account and loan the payment should be credited. When the servicer determines to which account and loan the payment should be credited, the servicer shall credit the payment as of the date the payment was received by the servicer and update the borrower's online account within one business day.

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

(c) (1) Inquire of a borrower how to apply an overpayment to a student loan. A borrower's direction on how to apply an overpayment to a student loan shall be effective with respect to future overpayments during the term of a student loan until the borrower provides a different direction.

(2) (A) In the absence of a direction provided by a borrower pursuant to paragraph (1), allocate an overpayment on a student loan account in a manner that is in the best financial interest of a student loan borrower.

(B) As used in this paragraph, "best financial interest of a student loan borrower" means reducing the total cost of the student loan, including principal balance, interest, and fees.

(3) A student loan servicer shall be considered to meet the requirements of paragraph (2) if the servicer allocates the overpayment to the loan with the highest interest rate on the borrower's student loan account, unless the borrower specifies otherwise.

(d) (1) Except as provided in federal law or required by a student loan agreement, comply with a direction provided by a borrower as to how to allocate a partial payment to a student loan.

(2) In the absence of a direction provided by a borrower pursuant to paragraph (1) of this subdivision, allocate a partial payment in a manner that minimizes late fees and negative credit reporting.

(3) A student loan servicer shall be considered to have satisfied paragraph (2) if, when there are multiple loans on a borrower's student loan account at an equal stage of delinquency, the student loan servicer allocates partial payments to satisfy as many loans as possible on a borrower's student loan account.

(e) (1) If a student loan servicer imposes a fee on a borrower for a past due student loan payment, that fee shall be reasonable and proportional to the total costs incurred as a result of the late payment by a borrower, and shall not exceed 6 percent of any amount past due.

(2) A student loan servicer shall not impose a minimum late fee. For purposes of this paragraph, "minimum late fee" includes any fee that is not assessed as a percentage of any amount past due.

(f) Diligently oversee its service providers. For purposes of this subdivision, "diligently oversee its service providers" includes maintaining policies and procedures to oversee compliance by third-party service providers engaged in any aspect of student loan servicing. Student loan servicers have joint and several liability for the conduct of their service providers for any act or practice that violates this title.

(g) (1) Timely process its paperwork, consistent with existing federal requirements, including, but not limited to, ensuring that customer service personnel have received both of the following:

(A) Appropriate training about the handling of paperwork.

(B) Access to necessary information about forms and applications that are in process, have been approved, or have been denied.

(2) The requirements of this subdivision include ensuring that customer service personnel have access to applications for income-driven repayment plans and other forms required to access benefits and protections for federal student loans, as described in Section 1070 and following of Title 20 of the United States Code.

(h) Except as required by a student loan agreement, all records about a borrower's account shall be maintained for the period of time during which a person performs student loan servicing for a borrower's account and for a minimum of three years after the loan serviced has been paid in full, assigned to collection, or the servicing rights have been transferred.

(i) Treat a qualified request as if it were a qualified written request and comply with subdivision (t) with respect to that qualified request.

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

(k) (1) Protect borrowers from any negative consequences that are directly related to the issue identified in a borrower's qualified request or qualified written request until that request has been resolved. For purposes of this subdivision, "negative consequences" include, but are not limited to, negative credit reporting, lost eligibility for a borrower benefit, late fees, interest capitalization, or other financial injury.

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

(l) Protect borrowers from any negative consequences stemming from a sale, assignment, transfer, system conversion, or payment made by the borrower to the original student loan servicer consistent with the original student loan servicer's policy. For purposes of this subdivision, "negative consequences" include, but are not limited to, any of the following:

(1) Negative credit reporting.

(2) The imposition of late fees not required by the promissory note.

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

(m) If the sale, assignment, or other transfer of the servicing of a student loan results in a change in the identity of the party to whom the borrower is required to send payments or direct any communications concerning the student loan, the student loan servicer shall notify the borrower in writing at least 15 days before the borrower is required to send a payment on the student loan of all of the following:

(1) The identity of the new student loan servicer and the number of the license, issued by the commissioner, of the new student loan servicer.

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

(3) The telephone numbers and internet websites of the new student loan servicer.

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

(5) The date on which the current student loan servicer will stop accepting payments on the borrower's student loan.

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

(n) Ensure all necessary information regarding a borrower, a borrower's account, and a borrower's student loan accompanies a loan when it transfers to a new student loan servicer within 45 calendar days of the effective date of the sale, assignment, or transfer. For purposes of this subdivision, "necessary information" shall include, at minimum, all of the following:

(1) A schedule of all transactions credited or debited to the student loan account.

(2) A copy of the promissory note for the student loan.

(3) Any notes created by student loan servicer's personnel reflecting communications with the borrower about the student loan account.

(4) A report of the data fields relating to the borrower's student loan account created by the student loan servicer's electronic systems in connection with servicing practices.

(5) Copies or electronic records of any information or documents provided by the borrower to the student loan servicer.

(6) Usable data fields with information necessary to assess qualification for forgiveness, including public service loan forgiveness, if applicable.

(7) Any information necessary to compile a payment history.

(o) Provide specialized training for any customer service personnel that advises military borrowers about student loan repayment benefits and protections.

(p) Provide specialized training for any customer service personnel that advises borrowers working in public service about student loan repayment benefits and protections.

(q) Provide specialized training for any customer service personnel that advises older borrowers about risks specifically applicable to older borrowers to ensure that, once identified, older borrowers are informed about student loan repayment benefits and protections, including disability discharge programs for private and federal loans, if applicable, and, to the extent an older borrower serves as cosigner, about cosigner release provisions in private student loan contracts.

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

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

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

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

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

(s) Respond within 10 business days to communications from the Student Loan Ombudsman, established pursuant to Chapter 4 (commencing with Section 1788.104), or within a shorter, reasonable time as the Student Loan Ombudsman may request in that person’s communication.

(t) (1) Respond to a qualified written request by acknowledging receipt of the request within 10 business days and within 30 business days, provide information relating to the request and, if applicable, either the action the student loan servicer will take to correct the account or an explanation for the position that the borrower's account is correct.

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

CHAPTER 3. ENFORCEMENT OF THE STUDENT BORROWER BILL
OF RIGHTS

1788.103. (a) A student loan servicer shall do both of the following:

(1) Comply with this title.

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

(b) Any consumer who suffers damage as a result of the failure of a student loan servicer to comply with paragraph (1) or (2) of subdivision (a) may, subject to the requirements of subdivisions (d) to (g), inclusive, bring an action on that consumer's behalf and on behalf of a similarly situated class of consumers against that student loan servicer to recover or obtain any of the following:

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

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

(3) Restitution of property.

(4) Punitive damages.

(5) Attorney's fees.

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

(c) In addition to any other remedies provided by this subdivision or otherwise provided by law, whenever it is proven by a preponderance of the evidence that a student loan servicer has engaged in conduct that substantially interferes with a borrower's right to an alternative payment arrangement; loan forgiveness, cancellation, or discharge; or any other financial

benefit as established under the terms of a borrower's promissory note or under the Higher Education Act of 1965 (20 U.S.C. Sec. 1070a et seq.), as from time to time amended, and the regulations promulgated thereunder, the court shall award treble actual damages to the plaintiff, but in no case shall the award of damages be less than one thousand five hundred dollars (\$1,500) per plaintiff, per violation.

(d) (1) At least 45 days before bringing an action for damages or injunctive relief pursuant to this chapter, a consumer shall do all of the following:

(A) Provide written notice to the person alleged to have violated subdivision (a) regarding the nature of the alleged violations.

(B) Demand that the person correct and remedy the method, acts, or practices to which the notice required by subparagraph (A) refers.

(2) The notice required by this subdivision shall be sent by certified or registered mail, return receipt requested, to the person's address on file with the Department of Business Oversight or to the person's principal place of business within California.

(e) An action for damages or injunctive relief brought by a consumer only on that consumer's behalf may not be maintained under subdivision (b) upon a showing by a person that an appropriate correction and remedy is given, or agreed to be given within a reasonable time, to the consumer within 30 days after receipt of the notice.

(f) An action for damages brought by a consumer on both the consumer's behalf and on behalf of a similarly situated class of consumers may not be maintained under subdivision (b) upon a showing by a person alleged to have employed or committed methods, acts, or practices declared unlawful that all of the following are true:

(1) All consumers similarly situated have been identified, or a reasonable effort to identify those other consumers has been made.

(2) All consumers so identified have been notified that, upon their request, the person shall make the appropriate correction and remedy.

(3) The correction and remedy requested by the consumers has been, or, in a reasonable time, will be, given.

(4) The person has ceased from engaging, or if immediate cessation is impossible or unreasonably expensive under the

circumstances, the person will, within a reasonable time, cease to engage, in the methods, act, or practices.

(g) Attempts to comply with a demand described in paragraph (2) of subdivision (d) by a person receiving that demand shall be construed to be an offer to compromise and shall be inadmissible as evidence pursuant to Section 1152 of the Evidence Code. Furthermore, these attempts to comply with a demand shall not be considered an admission of engaging in an act or practice declared unlawful by subdivision (a). Evidence of compliance or attempts to comply with this section may be introduced by a defendant for the purpose of establishing good faith or to show compliance with subdivision (a).

(h) An award of damages shall not be given in an action based on a method, act, or practice in violation of subdivision (a) if the person alleged to have employed or committed that method, act, or practice does both of the following:

(1) Proves by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the use of reasonable procedures adopted to avoid that error.

(2) Makes an appropriate correction, repair, replacement, or other remedy according to the provisions of subdivisions (d) and (e) as required by law.

(i) The commissioner shall administer and enforce the provisions of this title and may promulgate rules and regulations and issue orders consistent with that authority.

(1) The commissioner shall have the authority to carry over any regulations issued pursuant to the Student Loan Servicing Act in order to implement equivalent provisions of this act.

(2) Any rules issued pursuant to the Student Loan Servicing Act in effect at the time of enactment of this act shall remain in effect until the commissioner repeals or reissues those regulations.

CHAPTER 4. ESTABLISHMENT OF THE CALIFORNIA STUDENT LOAN OMBUDSMAN

1788.104. (a) Not later than 180 days following the operative date of this chapter, the commissioner shall designate a Student Loan Ombudsman to work within the department. The Student

Loan Ombudsman shall hire additional staff as necessary to implement this section.

(b) The Student Loan Ombudsman shall receive and review complaints from student loan borrowers.

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

(d) Complaints regarding student loans not subject to the Student Loan Servicing Act (Division 12.5 (commencing with Section 28100) of the Financial Code) shall be referred to the Department of Justice. The Department of Justice may investigate complaints regarding student loans referred by the Student Loan Ombudsman, and from the public, who may also submit complaints directly to the Department of Justice.

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

(f) The Student Loan Ombudsman shall confer with the Department of Justice and the Office of Student Assistance and Relief regarding the student loan complaints, the proper referral processes for those complaints, and the reporting requirements of the Student Loan Ombudsman under this title.

(g) The Student Loan Ombudsman has all of the following duties:

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

(2) Providing information to the public, agencies, legislators, and others regarding the problems and concerns of student loan borrowers and making recommendations for resolving those problems and concerns.

(3) Analyzing and monitoring the development and implementation of federal and state laws, rules, regulations, and policies relating to student loan borrowers.

(4) Disseminating information concerning the availability of the Department of Business Oversight, the Department of Justice, and the Bureau of Private Postsecondary Education to accept complaints from individual student loan borrowers and potential student loan borrowers.

(5) Requesting and compiling information provided by any student loan servicer if reasonably determined by the Student Loan Ombudsman to be necessary to effectuate the duties described in this subdivision, except if that student loan servicer is a national bank, as defined in Section 25b of Title 12 of the United States Code, and only to the extent that the requirements of this paragraph are preempted with respect to national banks pursuant to Section 25b and following of Title 12 of the United States Code.

(6) Not later than 18 months after the operative date of this chapter, and not less frequently than once per year thereafter, the Student Loan Ombudsman shall submit a report to the appropriate committees of the Legislature having jurisdiction over higher education and financial institutions. The Student Loan Ombudsman shall report on all of the following:

(A) The implementation of this section.

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

(C) Other data and analysis on outstanding student loan issues faced by borrowers.

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

(i) The operation of this chapter is contingent upon the enactment of an appropriation in the annual Budget Act for its purposes.

(j) This chapter shall become operative on July 1, 2021.

CHAPTER 5. SHINING A SPOTLIGHT ON STUDENT LOAN
INDUSTRY PRACTICES

1788.105. (a) The commissioner may monitor for risks to consumers in the provision of student loan servicing in this state, including developments in the market for those services, by compiling and analyzing data and other information based on any of the following considerations:

(1) The likely risks and costs to consumers associated with using or repaying a student loan or with the servicing of a student loan.

(2) The understanding by consumers of the risks of a student loan or the servicing of a student loan.

(3) The legal protections applicable to the offering or provision of a student loan or the servicing of a student loan, including the extent to which the law is likely to adequately protect consumers.

(4) The rates of growth in the offering or provision of a student loan or the servicing of that loan.

(5) The extent, if any, to which the risks of a student loan or the servicing of a student loan disproportionately affect traditionally underserved consumers.

(6) The type, number, and other pertinent characteristics of student loan servicers in this state.

(b) In conducting any monitoring or assessment authorized by this section, the commissioner may gather information regarding the organization, business conduct, markets, and activities of student loan servicers in this state, except if that student loan servicer is a national bank, as defined in Section 25b of Title 12 of the United States Code, and only to the extent that the requirements of this paragraph are preempted with respect to national banks pursuant to Section 25b and following of Title 12 of the United States Code. The commissioner may enter into contracts to perform the duties required in this section, as necessary.

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

(1) Gather and compile information from a variety of sources, including consumer complaints, voluntary surveys and voluntary interviews of consumers, surveys and interviews with student loan servicers and service providers, and review of available databases.

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

(d) (1) In addition to any other market monitoring activities deemed necessary by the commissioner, pursuant to subdivision (a), the department may gather and compile information from student loan servicers to assemble data that assesses the total size of the student loan market in this state, the servicing of loans owed by borrowers at risk of default, the servicing of private student loans owed by borrowers experiencing financial distress, and the servicing of federal student loans for borrowers who seek to repay their loans under an Income Driven Repayment Plan as described in Section 1070 et seq. of Title 20 of the United States Code.

(2) The commissioner may, on a quarterly basis, develop and publicize metrics based on data collected pursuant to this subdivision, and those metrics may identify each student loan servicer and publish relevant metrics related to performance of student loan servicing by each person. In executing the function described in this subdivision, the commissioner may meet and confer with the Student Loan Ombudsman established pursuant to Chapter 4.

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

(f) This chapter shall become operative on July 1, 2021.

(g) The operation of this chapter is contingent upon the enactment of an appropriation in the annual Budget Act for its purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Performing both of the following:

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

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

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

(A) Maintaining account records for the student loan.

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

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

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

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

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

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

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

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

(m) "Student loan servicer" means any person engaged in the business of servicing student loans. A "student loan servicer" does not include a debt collector, as defined in Section 1788.2 of the Civil Code, whose student loan debt collection business, and business operations, involve collecting, or attempting to collect, on defaulted student loans, that is, federal student loans for which

no payment has been received for 270 days or more, or private student loans, in default, according to the terms of the loan documents. Debt collectors who also service nondefaulted student loans, as part of their business, and business operations, are “student loan servicers.”

SEC. 4. Section 28112 of the Financial Code is amended to read:

28112. An applicant shall apply for a license by submitting all of the following to the commissioner:

(a) A completed application for a license in a form prescribed by the commissioner and signed under penalty of perjury.

(b) The sum of one hundred dollars (\$100) as a fee for investigating the application, plus the cost of fingerprint processing and the criminal history record check under Section 28116, and three hundred dollars (\$300) as an application fee. The investigation fee, including the amount for the criminal history record check, and the application fee are not refundable if an application is denied or withdrawn.

(c) Audited financial statements prepared in accordance with generally accepted accounting principles and acceptable to the commissioner that indicate a net worth of at least two hundred fifty thousand dollars (\$250,000).

(d) Subject to the commissioner’s discretion, an applicant or licensee that is a wholly owned subsidiary of a public holding company required to comply with the reporting requirements of the Securities and Exchange Commission may satisfy the requirement of subdivision (c) by submitting the annual consolidated audited financial statements filed with the Securities and Exchange Commission, including consolidating financial statements of the subsidiary.

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

28130. A licensee shall do all of the following:

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

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

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

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

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

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

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

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

SEC. 8. Section 28140 of the Financial Code is amended to read:

28140. (a) A licensee shall continuously maintain a minimum net worth of at least two hundred fifty thousand dollars (\$250,000).

(b) Subject to the commissioner's sole discretion, an applicant or licensee that is a wholly owned subsidiary of a public holding company required to comply with the reporting requirements of the Securities and Exchange Commission may satisfy the requirement of subdivision (a) by submitting the annual consolidated audited financial statements filed with the Securities and Exchange Commission, including consolidating financial statements of the subsidiary, which evidence to the commissioner's satisfaction that the subsidiary meets the continuous minimum net worth requirements of at least two hundred fifty thousand dollars (\$250,000).

SEC. 9. 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.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

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

Approved _____, 2020

Governor