
SENATE BILL 6610

State of Washington

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By Senators Lias, Frockt, Rolfes, Carlyle, Nelson, Billig, Mullet, Conway, Darneille, Keiser, McAuliffe, and Habib

Read first time 01/29/16. Referred to Committee on Higher Education.

1 AN ACT Relating to establishing a student loan bill of rights;
2 adding a new section to chapter 28B.77 RCW; and adding new sections
3 to chapter 43.320 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 28B.77
6 RCW to read as follows:

7 (1) The council shall designate a student loan ombuds within the
8 office to provide timely assistance to any student loan borrower of
9 any student education loan.

10 (2) The student loan ombuds, in consultation with the attorney
11 general and the director of the department of financial institutions,
12 shall:

13 (a) Receive, review, and refer to the state attorney general or
14 the department of financial institutions complaints from student loan
15 borrowers including, but not limited to, attempts to resolve such
16 complaints in collaboration with institutions of higher education,
17 student loan servicers and any other participants in student loan
18 lending including, but not limited to, the four-year institutions of
19 higher education;

20 (b) Compile and analyze data on student loan borrower complaints
21 as described in (a) of this subsection;

1 (c) Assist student loan borrowers to understand their rights and
2 responsibilities under the terms of student education loans;

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

6 (e) Analyze and monitor the development and implementation of
7 federal, state, and local laws, rules, regulations, and policies
8 relating to student loan borrowers and recommend any changes the
9 student loan ombuds deems necessary;

10 (f) Review the complete student education loan history for any
11 student loan borrower who has provided written consent for such
12 review;

13 (g) Disseminate information concerning the availability of the
14 student loan ombuds to assist student loan borrowers and potential
15 student loan borrowers, as well as institutions of higher education,
16 student loan servicers, and any other participant in student
17 education loan lending, with any student loan servicing concerns; and

18 (h) Take any other actions necessary to fulfill the duties of the
19 student loan ombuds as provided in this subsection.

20 (3) By October 1, 2017, the student loan ombuds, in consultation
21 with the council, shall establish and maintain a student loan
22 borrower education course that includes educational presentations and
23 materials regarding issues surrounding student education loans. The
24 program must include, but not be limited to, key loan terms,
25 documentation requirements, monthly payment obligations, income-based
26 repayment options, loan forgiveness, disclosure requirements, federal
27 gainful employment laws, and the veterans loophole in the ninety-ten
28 rule.

29 (4) By December 31, 2016, and annually thereafter, the council
30 shall submit a report to the appropriate committees of the
31 legislature having cognizance of matters relating to banking and
32 higher education. The council shall report on:

33 (a) The implementation of this section;

34 (b) The overall effectiveness of the student loan ombuds
35 position; and

36 (c) Additional steps that need to be taken for the council to
37 gain regulatory control over the licensing and enforcement of student
38 loan servicers.

39 (5) The student loan ombuds account is created in the custody of
40 the state treasurer. All receipts from appropriations by the

1 legislature and any licensing or investigation fees collected
2 pursuant to section 3(2) of this act must be deposited into the
3 account. Only the executive director or the student loan ombuds may
4 authorize expenditures from the student loan ombuds account. The
5 account is subject to the allotment procedures under chapter 43.88
6 RCW, but an appropriation is not required for expenditures.
7 Expenditures from the account may be used solely for administering
8 the provisions of this section.

9 (6) The definitions in section 2 of this act apply to this
10 section.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.320
12 RCW to read as follows:

13 The definitions in this section apply throughout sections 1 and 3
14 through 10 of this act, unless the context clearly requires
15 otherwise.

16 (1) "Director" means the director of the department of financial
17 institutions.

18 (2) "Servicing" means:

19 (a) Receiving any scheduled periodic payments from a student loan
20 borrower pursuant to the terms of a student education loan;

21 (b) Applying the payments of principal and interest and such
22 other payments with respect to the amounts received from a student
23 loan borrower, as may be required pursuant to the terms of a student
24 education loan; and

25 (c) Performing other administrative services with respect to a
26 student education loan.

27 (3) "Student education loan" means any loan primarily for
28 personal use to finance education or other school-related expenses.

29 (4) "Student loan borrower" means:

30 (a) Any resident of this state who has received or agreed to pay
31 a student education loan; or

32 (b) Any person who shares responsibility with such resident for
33 repaying the student education loan.

34 (5) "Student loan servicer" means any person, wherever located,
35 responsible for the servicing of any student education loan to any
36 student loan borrower.

37 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.320
38 RCW to read as follows:

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

5 (b) The following persons are exempt from student loan servicer
6 licensing requirements: (i) Any bank, out-of-state bank, Washington
7 state credit union, federal credit union, or out-of-state credit
8 union; (ii) any wholly owned subsidiary of any such bank or credit
9 union; and (iii) any operating subsidiary where each owner of such
10 operating subsidiary is wholly owned by the same bank or credit
11 union.

12 (2)(a) Any person seeking to act within this state as a student
13 loan servicer shall make a written application to the director for an
14 initial license in such form as the director prescribes. The
15 application shall be accompanied by:

16 (i) A financial statement prepared by a certified public
17 accountant or a public accountant, the accuracy of which is sworn to
18 under oath before a notary public by the proprietor, a general
19 partner, or a corporate officer, or a member duly authorized to
20 execute such documents;

21 (ii) The history of criminal convictions of the (A) applicant;
22 (B) partners, if the applicant is a partnership; (C) members, if the
23 applicant is a limited liability company or association; or (D)
24 officers, directors, and principal employees, if the applicant is a
25 corporation; and

26 (iii) Sufficient information pertaining to the history of
27 criminal convictions of such applicant, partners, members, officers,
28 directors, or principal employees as the director deems necessary to
29 make the findings under subsection (3)(c) of this section;

30 (iv) A nonrefundable license fee of one thousand dollars; and

31 (v) A nonrefundable investigation fee of eight hundred dollars.

32 (b) The director may conduct a state and national criminal
33 history record check of the applicant and of each partner, member,
34 officer, director, and principal employee of the applicant.

35 (3) Upon the filing of an application for an initial license and
36 the payment of the fees for license and investigation, the director
37 shall investigate the financial condition and responsibility,
38 financial and business experience, character, and general fitness of
39 the applicant. The director may issue a license if the director finds
40 that:

1 (a) The applicant's financial condition is sound;

2 (b) The applicant's business will be conducted honestly, fairly,
3 equitably, carefully, and efficiently within the purposes and intent
4 of sections 2 through 10 of this act, and in a manner commanding the
5 confidence and trust of the community;

6 (c)(i) If the applicant is an individual, such individual is in
7 all respects properly qualified and of good character;

8 (ii) If the applicant is a partnership, each partner is in all
9 respects properly qualified and of good character;

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

18 (iv) If the applicant is a limited liability company, each member
19 is in all respects properly qualified and of good character;

20 (d) No person on behalf of the applicant knowingly has made any
21 incorrect statement of a material fact in the application, or in any
22 report or statement made pursuant to sections 2 through 10 of this
23 act;

24 (e) No person on behalf of the applicant knowingly has omitted to
25 state any material fact necessary to give the director any
26 information lawfully required by the director;

27 (f) The applicant has paid the investigation fee and the license
28 fee required under subsection (2) of this section; and

29 (g) The applicant has met any other similar requirements as
30 determined by the director.

31 (4) A license issued pursuant to subsection (3) of this section
32 expires at the close of business on September 30th of the odd-
33 numbered year following its issuance, unless renewed or earlier
34 surrendered, suspended, or revoked pursuant to sections 2 through 10
35 of this act. Not later than fifteen days after a licensee ceases to
36 engage in the business of student loan servicing in this state for
37 any reason, including a business decision to terminate operations in
38 this state, license revocation, bankruptcy, or voluntary dissolution,
39 the licensee must provide written notice of surrender to the director
40 and must surrender to the director its license for each location in

1 which the licensee has ceased to engage in such business. The written
2 notice of surrender must identify the location where the records of
3 the licensee will be stored and the name, address, and telephone
4 number of an individual authorized to provide access to the records.
5 The surrender of a license does not reduce or eliminate the
6 licensee's civil or criminal liability arising from acts or omissions
7 occurring before the surrender of the license, including any
8 administrative actions undertaken by the director to revoke or
9 suspend a license, assess a civil penalty, order restitution, or
10 exercise any other authority provided to the director.

11 (5) A license may be renewed for the ensuing twenty-four month
12 period upon the filing of an application containing all required
13 documents and fees as provided in subsection (2) of this section. The
14 renewal application shall be filed on or before September 1st of the
15 year in which the license expires. Any renewal application filed with
16 the director after September 1st must be accompanied by a one hundred
17 dollar late fee and any such filing shall be deemed to be timely and
18 sufficient. If an application for a renewal license has been filed
19 with the director on or before the date the license expires, the
20 license sought to be renewed continues in full force and effect until
21 the issuance by the director of the renewal license applied for or
22 until the director has notified the licensee in writing of the
23 director's refusal to issue such renewal license together with the
24 grounds upon which the refusal is based. The director may refuse to
25 issue a renewal license on any ground on which the commissioner might
26 refuse to issue an initial license.

27 (6) If the director determines that a check filed with the
28 director to pay a license or renewal fee has been dishonored, the
29 director shall automatically suspend the license or the renewal
30 license that has been issued but is not yet effective. The director
31 must give the licensee notice of the automatic suspension pending
32 proceedings for revocation or refusal to renew and an opportunity for
33 a hearing on such actions in accordance with the administrative
34 procedure act, chapter 34.05 RCW.

35 (7) The applicant or licensee shall notify the director, in
36 writing, of any change in the information provided in its initial
37 application for a license or its most recent renewal application for
38 such license, as applicable, not later than ten business days after
39 the occurrence of the event that results in such information becoming
40 inaccurate.

1 (8) The director may deem an application for a license abandoned
2 if the applicant fails to respond to any request for information
3 required under sections 2 through 10 of this act, or any rules
4 adopted pursuant to sections 2 through 10 of this act. The director
5 must notify the applicant, in writing, that if the applicant fails to
6 submit such information not later than sixty days after the date on
7 which such request for information was made, the application shall be
8 deemed abandoned. An application filing fee paid before the date an
9 application is deemed abandoned pursuant to this subsection shall not
10 be refunded. Abandonment of an application under this subsection does
11 not preclude the applicant from submitting a new application for a
12 license under the provisions of sections 2 through 10 of this act.

13 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.320
14 RCW to read as follows:

15 No person licensed to do business within this state as a student
16 loan servicer may do so under any other name or at any other place of
17 business than that named in the license. Any change of location of a
18 place of business of a licensee requires prior written notice to the
19 director. Only one place of business may be maintained under the same
20 license but the director may issue more than one license to the same
21 licensee upon compliance with the provisions of sections 2 through 10
22 of this act as to each new licensee. A license is not transferable or
23 assignable.

24 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.320
25 RCW to read as follows:

26 (1) Each student loan servicer licensee and persons exempt from
27 licensure under section 3(1)(b) of this act must maintain adequate
28 records of each student education loan transaction for not less than
29 two years following the final payment on such student education loan
30 or the assignment of such student education loan, whichever occurs
31 first, or such longer period as may be required by any other
32 provision of law.

33 (2) If requested by the director, each student loan servicer must
34 make such records available or send such records to the director by
35 registered or certified mail, return receipt requested, or by any
36 express delivery carrier that provides a dated delivery receipt, not
37 later than five business days after requested by the director to do

1 so. Upon request, the director may grant a licensee additional time
2 to make such records available or send the records to the director.

3 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.320
4 RCW to read as follows:

5 No student loan servicer may:

6 (1) Directly or indirectly employ any scheme, device, or artifice
7 to defraud or mislead student loan borrowers;

8 (2) Engage in any unfair or deceptive practice toward any person
9 or misrepresent or omit any material information in connection with
10 the servicing of a student education loan including, but not limited
11 to, misrepresenting the amount, nature, or terms of any fee or
12 payment due or claimed to be due on a student education loan, the
13 terms and conditions of the loan agreement, or the borrower's
14 obligations under the loan;

15 (3) Obtain property by fraud or misrepresentation;

16 (4) Knowingly misapply or recklessly apply student education loan
17 payments to the outstanding balance of a student education loan;

18 (5) Knowingly or recklessly provide inaccurate information to a
19 credit bureau, thereby harming a student loan borrower's
20 creditworthiness;

21 (6) Fail to report both the favorable and unfavorable payment
22 history of the student loan borrower to a nationally recognized
23 consumer credit bureau at least annually if the student loan servicer
24 regularly reports information to a credit bureau;

25 (7) Refuse to communicate with an authorized representative of
26 the student loan borrower who provides a written authorization signed
27 by the student loan borrower; however, the student loan servicer may
28 adopt procedures reasonably related to verifying that the
29 representative is in fact authorized to act on behalf of the student
30 loan borrower; or

31 (8) Negligently make any false statement or knowingly and
32 willfully make any omission of a material fact in connection with any
33 information or reports filed with a governmental agency or in
34 connection with any investigation conducted by the department of
35 financial institutions or another governmental agency.

36 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.320
37 RCW to read as follows:

1 (1) The director, in consultation with the attorney general, may
2 conduct investigations and examinations as follows:

3 (a) For purposes of initial licensing, license renewal, license
4 suspension, license revocation or termination, or general or specific
5 inquiry or investigation to determine compliance with sections 2
6 through 10 of this act, the director may access, receive, and use any
7 books, accounts, records, files, documents, information, or evidence
8 including, but not limited to: (i) Criminal, civil, and
9 administrative history information; (ii) personal history and
10 experience information, including independent credit reports obtained
11 from a consumer reporting agency described in section 603(p) of the
12 fair credit reporting act, 15 U.S.C. Sec. 1681a; and (iii) any other
13 documents, information, or evidence the director deems relevant to
14 the inquiry or investigation regardless of the location, possession,
15 control, or custody of such documents, information, or evidence.

16 (b) For the purposes of investigating violations or complaints
17 arising under sections 2 through 10 of this act or for the purposes
18 of examination, the director may review, investigate, or examine any
19 student loan servicer licensee or person subject to sections 2
20 through 10 of this act as often as necessary in order to carry out
21 the purposes of sections 2 through 10 of this act. The director may
22 direct, subpoena, or order the attendance of and examine under oath
23 all persons whose testimony may be required about the student
24 education loan or the business or subject matter of any such
25 examination or investigation, and may direct, subpoena, or order such
26 person to produce books, accounts, records, files, and any other
27 documents the commissioner deems relevant to the inquiry.

28 (2) In making any examination or investigation authorized by this
29 section, the director may control access to any documents and records
30 of the student loan servicer licensee or person under examination or
31 investigation. The director may take possession of the documents and
32 records or place a person in exclusive charge of the documents and
33 records in the place where they are usually kept. During the period
34 of control, no person may remove or attempt to remove any of the
35 documents and records except pursuant to a court order or with the
36 consent of the director. Unless the director has reasonable grounds
37 to believe the documents or records of the student loan servicer
38 licensee or person have been, or are at risk of being, altered or
39 destroyed for purposes of concealing a violation of sections 2
40 through 10 of this act, the student loan servicer licensee or owner

1 of the documents and records shall have access to the documents or
2 records as necessary to conduct its ordinary business affairs.

3 (3) In order to carry out the purposes of this section, the
4 director may:

5 (a) Retain attorneys, accountants, or other professionals and
6 specialists as examiners, auditors, or investigators to conduct or
7 assist in the conduct of examinations or investigations;

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

13 (c) Use, hire, contract, or employ public or privately available
14 analytical systems, methods, or software to examine or investigate
15 the student loan servicer licensee or person subject to sections 2
16 through 10 of this act;

17 (d) Accept and rely on examination or investigation reports made
18 by other government officials, within or without this state; and

19 (e) Accept audit reports made by an independent certified public
20 accountant for the student loan servicer licensee or person subject
21 to sections 2 through 10 of this act in the course of that part of
22 the examination covering the same general subject matter as the audit
23 and may incorporate the audit report in the report of examination,
24 report of investigation, or other writing of the director.

25 (4) The authority of this section remains in effect, whether such
26 student loan servicer licensee or person subject to sections 2
27 through 10 of this act, acts or claims to act under any licensing or
28 registration law of this state, or claims to act without such
29 authority.

30 (5) No student loan servicer licensee or person subject to
31 investigation or examination under this section may knowingly
32 withhold, abstract, remove, mutilate, destroy, or secrete any books,
33 records, computer records, or other information.

34 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.320
35 RCW to read as follows:

36 (1) The director may suspend, revoke, or refuse to renew any
37 license issued under the provisions of section 3(3) of this act if
38 the director finds that (a) the licensee has violated any provision
39 of sections 2 through 10 of this act or any rule or order lawfully

1 made pursuant to and within the authority of sections 2 through 10 of
2 this act or (b) any fact or condition exists which, if it had existed
3 at the time of the original application for the license, clearly
4 would have warranted a denial of the license. No abatement of the
5 license fee may be made if the license is surrendered, revoked, or
6 suspended before the expiration of the period for which it was
7 issued.

8 (2) Whenever it appears to the director that any person has
9 violated, is violating, or is about to violate any of the provisions
10 of sections 2 through 10 of this act, or any rule adopted pursuant to
11 sections 2 through 10 of this act, or any licensee or any owner,
12 director, officer, member, partner, shareholder, trustee, employee,
13 or agent of such licensee has committed any fraud, engaged in
14 dishonest activities, or made any misrepresentation, the director may
15 take action against such person or licensee.

16 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.320
17 RCW to read as follows:

18 A student loan servicer shall comply with all applicable federal
19 laws and regulations relating to student loan servicing including,
20 but not limited to, the truth-in-lending act, 15 U.S.C. Sec. 1601 et
21 seq., as from time to time amended, and the regulations adopted
22 thereunder. In addition to any other remedies provided by law, a
23 violation of any such federal law or regulation shall be deemed a
24 violation of this section and a basis upon which the director may
25 take enforcement action pursuant to section 8 of this act.

26 NEW SECTION. **Sec. 10.** A new section is added to chapter 43.320
27 RCW to read as follows:

28 The legislature finds that the practices governed by sections 3
29 through 9 of this act are matters vitally affecting the public
30 interest for the purpose of applying the consumer protection act,
31 chapter 19.86 RCW. Any violation of this chapter is not reasonable in
32 relation to the development and preservation of business and is an
33 unfair or deceptive act or practice and unfair method of competition
34 in the conduct of trade or commerce in violation of RCW 19.86.020.
35 Remedies provided by chapter 19.86 RCW are cumulative and not
36 exclusive.

1 NEW SECTION. **Sec. 11.** A new section is added to chapter 43.320
2 RCW to read as follows:
3 The director shall adopt such rules as are necessary to implement
4 the provisions of this section and sections 2 through 9 of this act.

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