Senate Bill 279

Sponsored by Senator TAYLOR, Representative POWER, Senators BENTZ, KNOPP, ROBLAN (at the request of Attorney General Ellen Rosenblum) (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Requires certain persons that service student loans in this state to obtain or renew license.
Specifies license application and renewal procedures and required fees.
Prescribes duties of licensee and requires licensee to maintain specified liquidity, operating reserves and tangible net worth.
Prescribes civil penalty against person that engages in business as student loan servicer without license.
Permits Director of Department of Consumer and Business Services to participate in multistate examinations under specified circumstances.
Declares emergency, effective on passage.

A BILL FOR AN ACT
Relating to student loan servicers; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 11 of this 2019 Act:
(1) “Affiliate” means a person who controls, is controlled by or is under common control with another person.
(2) “Applicant” means a person that applies for a license to engage in business as a student loan servicer in this state.
(3) “Borrower” means a resident of this state who has received or agreed to pay a student loan or another person who shares responsibility with the resident for repaying a student loan.
(4) “Branch office” means a location at which a business entity services a student loan other than the business entity's headquarters or principal place of business.
(5) “Business entity” means a corporation, limited liability company, partnership, limited partnership, business trust, joint venture or other form of business organization the constituent parts of which share a common economic interest.
(6) “Controller” means:
(a) A director, officer or general partner of a business entity;
(b) A managing member of a limited liability company;
(c) A person that has a direct or indirect right to vote 10 percent or more of the securities of a business entity that have voting rights or the power to sell or cause the sale of 10 percent or more of any class of a business entity's securities;
(d) A person that has contributed 10 percent or more to a partnership's capital or has the right to receive a distribution of 10 percent or more of a partnership's capital or assets upon dissolution; or
(e) A person that, under the terms of a contract or because the person has an ownership

NOTE: Matter in boldfaced type in an amended section is new; matter [italic and bracketed] is existing law to be omitted. New sections are in boldfaced type.

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interest in another person, has the power to manage or set policies for the other person, or
otherwise direct the other person’s operations or affairs.

(7) “Licensee” means a person that has applied for and obtained or renewed a license
from the Director of the Department of Consumer and Business Services to engage in busi-
ness as a student loan servicer in this state.

(8) “Manager” means an individual who has supervisory authority over employees and
operations at a business entity’s branch office or other business location.

(9) “Person” means an individual or a business entity.

(10) “Service a student loan” means to:

(a) Receive a scheduled periodic payment from a borrower under the terms of a student
loan;

(b) Apply payments of principal and interest and other payments from a borrower in ac-
cordance with the terms of a student loan; or

(c) Perform other administrative services with respect to a student loan.

(11) “Student loan” means a loan the proceeds of which a borrower uses primarily for
personal use to pay education expenses or other school-related expenses.

SECTION 2. (1) A person may not directly or indirectly service a student loan in this
state unless the person obtains or renews a license under section 3 of this 2019 Act.

(2) Subsection (1) of this section does not apply to:

(a) A financial institution, as defined in ORS 706.008.

(b) A person that has obtained a license under ORS 725.140.

(c) A financial holding company or bank holding company, both as defined in ORS 706.008,
if the financial holding company or bank holding company does no more than control an af-
filiate or a subsidiary, as defined in 12 U.S.C. 1841(d), and does not engage in business as a
student loan servicer.

(d) An attorney who is licensed or otherwise authorized to practice law in this state if
the attorney:

(A) Services a student loan as an ancillary matter while representing a client; and

(B) Does not receive compensation from a student loan servicer.

(e) An agency or instrumentality of this state or the United States.

(f) A person that the Director of the Department of Consumer and Business Services
designates by rule or order as exempt.

(3) Notwithstanding subsection (2) of this section, the director may require any person
to obtain a license under section 3 of this 2019 Act before the person services a student loan
if the director determines that the person has violated state or federal law or has engaged
in a course of dealing that is fraudulent, deceptive or dishonest.

(4)(a) If the director reasonably believes that a person is subject to sections 1 to 11 of
this 2019 Act or is engaging in or is about to engage in an act or practice that constitutes
servicing a student loan in this state without first obtaining a license as provided in sub-
section (1) of this section, the director may:

(A) Order the person to:

(i) Cease and desist from the act or practice; or

(ii) Affirmatively perform an act; or

(B) Apply to a circuit court of this state to enjoin the person from engaging in the act
or practice.
(b) The director shall state in reasonable detail the facts on which the director bases an
order under paragraph (a)(A) of this subsection.

(c) If a person that is subject to an order under paragraph (a)(A) of this subsection re-
quests a hearing, the director shall schedule and give notice of a hearing in accordance with
ORS chapter 183. If the person does not request a hearing, the director's order becomes final
30 days after the date of the order.

SECTION 3. (1)(a) A person that is subject to the requirement to obtain or renew a li-
cense under section 2 of this 2019 Act shall submit an application to the Director of the De-
partment of Consumer and Business Services in the manner, on a form and with the
contents the director specifies by rule.

(b) The director by rule may require an applicant to submit the application described in
paragraph (a) of this subsection to the Nationwide Multistate Licensing System instead of,
or in addition to, submitting the application to the director.

(2)(a) An applicant shall submit with or as part of an application under subsection (1) of
this section:

(A) Fingerprints from all of the applicant's controllers, registered agents and managers;

(B) A unique identifier that the applicant applies for and receives from the Nationwide
Multistate Licensing System;

(C) The name and address of the applicant's registered agent in this state;

(D) The street address of the applicant's principal place of business and of each branch
office in this state at or from which the applicant will service a student loan;

(E) The name of the manager of any branch office the applicant maintains in this state;

(F) The assumed business name, if any, that the applicant intends to use or under which
the applicant intends to operate; and

(G) Other information the director requires to conduct a state and national criminal
history and background check and evaluate the application.

(b) The director by rule may modify or waive, for an application to renew a license, any
requirement under paragraph (a) of this subsection that the director determines is not nec-
essary for evaluating or approving the application for renewal.

(3) At the time an applicant submits an application under subsection (1) of this section,
the applicant shall also:

(a) Pay to the director a fee in an amount that the director specifies by rule. The director
shall specify the fee in an amount that is sufficient, when aggregated with fees from other
applicants, to meet the director's cost of administering sections 1 to 11 of this 2019 Act.

(b) Submit to the director a corporate surety bond or irrevocable letter of credit issued
by an insured institution, as defined in ORS 706.008, that runs to the State of Oregon in an
amount the director specifies by rule. If the applicant seeks to renew a license and previously
submitted a corporate surety bond or irrevocable letter of credit, the applicant shall show
that the corporate surety bond or irrevocable letter of credit remains effective in the amount
the director specifies.

(4)(a) The director may not issue or renew a license under this section unless the direc-
tor finds that:

(A) The applicant submitted a complete application that does not contain a material
misstatement;

(B) The application identifies a registered agent in this state;
(C) The application names a manager for each of the applicant's branch offices in this state;
(D) The applicant and the applicant's controllers, registered agents and managers have not pleaded guilty or no contest in, or been convicted by, a state, federal, foreign or military court:
   (i) In the seven years before the date of the application, if the plea or conviction was for a felony, or for a misdemeanor an essential element of which involved a false statement or dishonesty; or
   (ii) At any time before the date of the application if the plea or conviction was for a felony an element of which was fraud, dishonesty, a breach of trust or laundering a monetary instrument;
(E) The applicant and the applicant's controllers, registered agents and managers have demonstrated adequate financial responsibility, character and general fitness to command the confidence of the community and warrant a determination that the applicant will operate honestly, fairly and efficiently under the provisions of sections 1 to 11 of this 2019 Act;
(F) The applicant has paid the fee and submitted the corporate surety bond or irrevocable letter of credit required under subsection (3) of this section; and
(G) The applicant has passed the director's background checks and has satisfied any other criteria for evaluating the applicant's financial responsibility and fitness that the director specifies by rule.
(b) An applicant need not report a conviction on an application under this section if the conviction was later pardoned.
(5)(a) The director may deny, revoke or decline to renew a license if an applicant, a licensee or a person that services a student loan:
   (A) Does not meet criteria set forth in subsection (4) of this section that the director has not waived under subsection (2)(b) of this section;
   (B) Engages in a course of conduct that violates state or federal law or that constitutes fraudulent, deceptive or dishonest dealing;
   (C) Fails or refuses to comply with the director's written request under section 9 of this 2019 Act to respond to a complaint against the applicant or licensee; or
   (D) Fails or refuses to comply with a final order the director issued.
   (b) The director shall provide a licensee with notice and an opportunity for a hearing under ORS chapter 183 before revoking or declining to renew a license.
(6)(a) A license that the director issues or renews under this section expires on December 31 of the calendar year in which the director issued or renewed the license and is not transferable or assignable. A licensee shall display a copy of the license at the licensee's principal place of business and at each branch office in this state at or from which the licensee services a student loan.
   (b) An applicant that intends to renew a license shall apply for the renewal before the license expires.
   (c) A licensee may reinstate a license that has expired only if the licensee applies to renew the license under this section within the time permitted by the Nationwide Multistate Licensing System.
   (d) A licensee may not service a student loan during a period in which the licensee has applied to reinstate a license unless the director has given conditional approval to the
licensee. The conditional approval may specify which accounts the licensee may service and
which services the licensee may provide during the period in which the licensee’s application
for reinstatement is pending.

(e) A licensee that ceases servicing student loans in this state or otherwise ceases
transacting business in this state shall, within 10 days after doing so, surrender to the di-
rector any unexpired license the director issued under this section and shall attach the li-
cense to the notice the licensee provides to the director under section 6 of this 2019 Act. A
licensee’s surrender of a license under this paragraph does not reduce or eliminate any civil
or criminal liability that arises from any of the licensee’s acts or omissions that occurred
before the surrender.

SECTION 4. (1) A licensee shall designate and maintain a principal place of business at
or from which the licensee services student loans in this state and shall designate a regis-
tered agent in this state.

(2)(a) If a licensee does not maintain a principal place of business in this state the
licensee shall nevertheless designate a registered agent in this state. The registered agent
must be available to receive on the licensee’s behalf any notice, demand or service of process
permitted by law to be given, made or delivered to, or served upon, the licensee.

(b) If the licensee does not designate a registered agent in this state, or if the licensee’s
registered agent cannot with reasonable diligence be located, the Director of the Department
of Consumer and Business Services is the licensee’s registered agent.

(3) A licensee may not use or operate under an assumed business name unless the
licensee first registers the assumed business name under ORS chapter 648 and lists the name
on an application under section 3 of this 2019 Act or in a notice to the director under section
6 of this 2019 Act.

SECTION 5. (1)(a) A licensee shall maintain in accordance with generally accepted ac-
counting principles sufficient liquidity, operating reserves and tangible net worth to permit
the licensee to adequately meet all costs, expenses and other financial requirements related
to servicing student loans in this state. The Director of the Department of Consumer and
Business Services may specify by rule the standards a licensee must meet to comply with
the requirements set forth in this subsection.

(b) A licensee complies with the requirements set forth in this subsection if the licensee
meets the standards for liquidity, operating reserves and tangible net worth established by
the licensee’s home state or primary federal regulator. If the home state’s or primary federal
regulator’s standards do not apply to a particular student loan, the licensee in servicing the
student loan shall meet the highest standards the home state or primary federal regulator
has established for liquidity, operating reserves and tangible net worth.

(2)(a) If a licensee fails to meet the applicable standards for liquidity, operating reserves
and tangible net worth set forth in subsection (1) of this section, the director may take and
retain possession of the licensee’s property, business and assets located in this state until
the licensee returns, under the director’s supervision or oversight, to compliance with the
applicable standards.

(b) In taking and retaining possession of the licensee’s property, business and assets
under paragraph (a) of this subsection, the director shall conduct an inventory appropriate
for establishing a receivership for the licensee and file a copy of the inventory with:

(A) The Department of Consumer and Business Services;
(B) The clerk of the circuit court in the county in which the licensee's principal place of business in this state, or any branch office in this state, is located; and

(C) Each of the licensee's controllers, at the last address for each controller that the director has in the director's records.

(c) A circuit court that receives a copy of an inventory under paragraph (b)(B) of this subsection shall file the inventory, list the filing in the court's docket as a pending proceeding and assign a case number to the proceeding.

(3) If a licensee refuses to permit the director to take and retain possession of the licensee's property, business and assets under subsection (2) of this section or if the director can show that the interests of the licensee's borrowers or creditors require the appointment of a receiver, the director may apply to the circuit court in the county in which the licensee's principal place of business in this state is located for an order to appoint a receiver to take and retain possession of, operate or liquidate the licensee's property, business and assets. The court may appoint the director as the receiver.

(4) If, 60 days after the date on which the director took possession of a licensee's property, business and assets under subsection (2) of this section, the licensee has not returned to compliance with the applicable standards described in subsection (1) of this section, the director shall liquidate the licensee's property, business and assets. If the director is not the receiver for the licensee's property, business and assets, the director shall apply to the circuit court with which the director filed an inventory under subsection (2)(b)(B) of this section for an order to appoint the director or another person as receiver.

SECTION 6. (1)(a) A licensee shall notify the Director of the Department of Consumer and Business Services in writing at least 30 days before the licensee:

(A) Relocates or closes the licensee's principal place of business or a branch office in this state; or

(B) Opens a branch office that the licensee did not list in an application under section 3 of this 2019 Act.

(b) In a notice under paragraph (a) of this subsection the licensee shall list, as applicable:

(A) The new address to which the licensee relocates the licensee's principal place of business or any branch office; and

(B) The address for any new branch office the licensee opens.

(2)(a) A licensee shall notify the director in writing not later than 30 days after:

(A) Any appointment, resignation or other change occurs in the licensee's controllers, registered agents or managers; or

(B) Any material change occurs in the information that the licensee submitted in an application under section 3 of this 2019 Act.

(b) The licensee shall provide in a notice under paragraph (a)(A) of this subsection the name, address and title of any new controller, registered agent or manager the licensee appoints.

(3)(a) A licensee shall notify the director in writing not later than 10 days after:

(A) Filing for bankruptcy or reorganization;

(B) A controller, registered agent or manager of the licensee becomes subject to an indictment that is related in any manner to the licensee's activities;

(C) The licensee receives notice of a final order issued in this or another state that:

(i) Demands that the licensee cease and desist from any act;
(ii) Suspends or revokes a license or registration; or

(iii) Constitutes any other formal or informal regulatory action against the licensee;

(D) The licensee registers or changes and uses or operates under an assumed business name;

(E) The licensee ceases doing business or ceases servicing student loans; or

(F) Another change in the licensee’s operations or governance occurs in a manner or with an effect that the director determines by rule is significant enough to warrant the licensee notifying the director.

(b) A licensee shall specify in a notice under paragraph (a)(C) of this subsection the reasons any final order sets forth for taking a regulatory action against the licensee.

(c) A licensee shall identify in a notice under paragraph (a)(E) of this subsection the location in which the licensee stores records related to student loan servicing in this state and shall provide the name and contact information for an individual with authority to provide access to the records.

(4) A licensee shall notify the director immediately if the licensee changes registered agents or if the name or address of the licensee's registered agent in this state changes. In the notice, the licensee shall update the name and address of the registered agent.

SECTION 7. (1) The Director of the Department of Consumer and Business Services has general supervisory authority over:

(a) Each licensee in this state;

(b) Any person that services a student loan in this state, if the person is subject to sections 1 to 11 of this 2019 Act or if the director required the person to obtain a license under section 2 (3) of this 2019 Act; and

(c) Any person that had a license that the director withdrew, canceled, suspended, conditioned or revoked, if the person continues to service a student loan.

(2)(a) The authority described in subsection (1) of this section includes the authority to examine a licensee or a person described in subsection (1) of this section at any time.

(b) The director may charge and collect from a licensee or a person the director examines under this section the costs the director incurs in conducting the examination.

(3) In order to conduct an examination under this section, the director may:

(a) Retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators.

(b) Enter into agreements or relationships with other government officials or regulatory associations to share resources, use and create standardized methods, procedures, documents, databases, records, information or evidence or to reduce the director's regulatory burden or improve efficiency.

(c) Participate in multistate examinations that the Conference of State Bank Supervisors or the federal Consumer Financial Protection Bureau schedules and conducts. In conducting an examination under this paragraph, the director shall follow the protocol that the conference or bureau establishes for the examination.

(d) Accept and rely on examination or investigation reports from other government officials in this or another state.

(4) Books, accounts, papers, records, files, correspondence, contracts and agreements, disclosures, documentation and other information, material or evidence the director obtains in an examination under this section is confidential and subject to the provisions of ORS
705.137, except that a borrower may request to inspect material related to the borrower's
student loan that the director by rule specifies is available for inspection. The director shall
authenticate the borrower's identity before disclosing any material to the borrower.

(5) The director may adopt rules for the purpose of implementing sections 1 to 11 of this
2019 Act.

SECTION 8. (1) A person that services a student loan shall:
(a) Assess any fee that the person may assess against a borrower within 45 days after
the borrower incurs the fee.
(b) Accept and credit, or treat as credited, to the borrower's account all amounts the
person receives at the address to which the borrower has been instructed to send payments
on the borrower's student loan. The person must credit the payment, or treat the payment
as credited, within one business day after receiving the payment if the borrower has provided
sufficient information to credit the account. If the person uses the scheduled method of ac-
counting and the person receives a regularly scheduled payment before the scheduled due
date, the person shall credit the payment to the borrower's account not later than the
scheduled due date.
(c) Correct promptly any errors the person makes and refund promptly any fees the
person assesses against the borrower in error.
(2) A person that services a student loan may not, directly or indirectly:
(a) Employ any device, scheme or artifice to defraud another person;
(b) Knowingly make an untrue statement of a material fact or omit a material fact that
is necessary to make the person's statement true in light of the circumstances in which the
person makes the statement, or misrepresent the amount, nature or terms of any fee or
payment due or claimed to be due on a student loan or the terms and conditions of a loan
agreement or the borrower's obligations under the loan agreement;
(c) Obtain property by fraud or misrepresentation;
(d) Knowingly misapply or recklessly apply payments to the outstanding balance of a
student loan;
(e) Engage in an act, practice or course of business that operates or that the person in-
tends to operate as a fraud or deceit upon another person;
(f) Make or file with the department, or cause to be made or filed with the department,
a statement, report or document that the person knows is false in any material respect or
manner; or
(g) Maintain adequate records of each student loan transaction for not less than two
years, or a period otherwise specified by law, after a final payment on a student loan or after
the person assigns the student loan, whichever occurs first. At the director's request and
within five days after the request or within the time the director specifies in the request, the
person shall make the records available to the director or send the records to the director
in the manner the director specifies by rule.

SECTION 9. (1) If the Director of the Department of Consumer and Business Services
receives a complaint concerning a person that services a student loan, the director:
(a) Shall notify the person of the complaint, provide a copy of the complaint in the notice
and require the person to respond to the complaint and to the director within 30 days after
the date of the notice;
(b) May investigate the complaint and require the person to provide books, accounts,
papers, records, files, correspondence, contracts and agreements, disclosures, documentation
and other information, material or evidence necessary for the director's investigation; and
(c) May investigate the person and the person's policies and practices with respect to
servicing a student loan and require the person to provide books, accounts, papers, records,
files, documentation and other information, material or evidence necessary for the director's
investigation.

(2)(a) Except as provided in paragraph (b) of this subsection, books, accounts, papers,
records, files, correspondence, contracts and agreements, disclosures, documentation and
other information, material or evidence the director receives or possesses as a consequence
of an investigation under subsection (1) of this section are confidential unless state or federal
law or a court order permits or requires disclosure.

(b) The director may share any item listed in paragraph (a) of this subsection with any
state or federal agency.

(3) The director may charge and collect from a person the director investigates under
this section the costs the director incurs in conducting the investigation.

SECTION 10. (1) If after conducting an investigation, the Director of the Department of
Consumer and Business Services determines that a person that services a student loan has
violated sections 1 to 11 of this 2019 Act, a rule the director adopted or an order the director
issued under sections 1 to 11 of this 2019 Act or another applicable law, the director may
order the person to:

(a) Cease and desist from any act that constitutes a violation of sections 1 to 11 of this
2019 Act.

(b) Resolve any complaint the director received under section 9 of this 2019 Act and pay
the borrower that submitted the complaint any damages to which the borrower would be
entitled under law.

(c) Pay a borrower any amount the person received from the borrower as compensation
while engaging in any action that constituted a violation of sections 1 to 11 of this 2019 Act.

(2)(a) In addition to and not in lieu of any other penalty provided by law, the director
may impose a civil penalty under ORS 183.745 in an amount of not more than $5,000 for each
instance in which a person violates, aids or abets another person in violating, or procures a
violation of, sections 1 to 11 of this 2019 Act or an order the director issues under sections
1 to 11 of this 2019 Act.

(b) Each instance described in paragraph (a) of this subsection is a separate violation and
each day in which a person engages in a continuous violation is a separate violation. The
director may not impose a penalty that exceeds $20,000 for a continuous violation.

(3) The director may assess the costs of conducting an administrative proceeding under
this section against the person that is the subject of the administrative proceeding or may
include the costs of the administrative proceeding in any civil penalty the director imposes
under this section.

(4) A person that is subject to a civil penalty under this section may appeal the penalty
as provided in ORS chapter 183.

(5) The director shall deposit any amount the director receives under this section to the
General Fund of the State Treasury.

SECTION 11. (1) The Director of the Department of Consumer and Business Services
shall appoint or designate an ombudsman within the Department of Consumer and Business
Services for the purposes set forth in subsection (2) of this section.

(2) The ombudsman that the director appoints or designates under subsection (1) of this section shall, in consultation with the director or with other individuals the director designates:

(a) Receive, review and attempt to resolve complaints from borrowers. The ombudsman may consult or collaborate with student loan servicers, institutions of higher education, federal regulators or regulators in this state or other states and any other person that participates in activities related to student loans.

(b) Compile and analyze data on complaints from borrowers.

(c) Assist borrowers in understanding the borrowers’ rights and responsibilities under the terms of the borrowers’ student loans.

(d) Provide information about problems that borrowers have with student loans and recommend methods for addressing the problems to the public, to state agencies in this state or in other states, to members of the Legislative Assembly and to other persons that have an interest in student loans or in lending and servicing practices related to student loans.

(e) Monitor and analyze the substance and implementation of federal, state and local laws, regulations, rules and policies related to student loans and borrowers, and recommend any changes the ombudsman deems necessary.

(f) Review the history of any student loan for which the borrower has provided consent for the review.

(g) Publicize the ombudsman’s availability and the services that the ombudsman provides to borrowers and other persons that participate in activities related to student loans.

(h) Establish an education program for borrowers that, at a minimum, discusses key loan terms, documentation requirements, monthly payment obligations, income-based repayment options, loan forgiveness opportunities and requirements, and disclosure requirements. The ombudsman may provide the program or may contract with a vendor to provide a program that meets standards the ombudsman specifies. The ombudsman or vendor may provide the program remotely or electronically.

(i) Take any other action that is necessary to implement the duties described in this section.

(3) Each January 1, beginning in 2021, the director shall submit a report to a committee of the Legislative Assembly related to higher education that:

(a) Summarizes the ombudsman’s activities in implementing this section;

(b) Evaluates the effectiveness of the ombudsman and the ombudsman’s activities in implementing this section and makes recommendations for any changes that are necessary in the ombudsman’s powers or responsibilities; and

(c) Recommends changes in law or rule or in the application or implementation of laws or rules related to servicing student loans that are necessary to achieve regulatory compliance among student loan servicers and otherwise to reduce the incidence of problems and complaints from borrowers.

SECTION 12. Sections 1 to 11 of this 2019 Act apply to actions that a person takes to service a student loan for which a borrower enters into or renews an agreement on or after the operative date specified in section 13 of this 2019 Act.

SECTION 13. (1) Sections 1 to 11 of this 2019 Act become operative on January 1, 2020.

(2) The Director of the Department of Consumer and Business Services may adopt rules
and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the director, on and after the operative date specified in subsection (1) of this section, to exercise all of the duties, functions and powers conferred on the director by sections 1 to 11 of this 2019 Act.

SECTION 14. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.