

# House Bill 2175

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of State Treasurer Tobias Read)

## 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, required fees and persons that are exempt from requirement.

Prescribes duties of licensee and requires licensee to maintain specified liquidity, operating reserves and tangible net worth. Prescribes duties and prohibitions for any person that services student loan in this state.

Requires Director of Department of Consumer and Business Services to appoint or designate student loan conciliator to respond to and investigate borrower complaints and perform other specified duties.

Prescribes civil penalty against person that violates provisions of Act.

Permits director to participate in multistate examinations under specified circumstances.

Becomes operative July 1, 2022.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to student loan servicers; and declaring an emergency.

3       Whereas more than 1 million Americans defaulted on a student loan in 2017; and

4       Whereas for these borrowers and many others who make payments but barely get by, the fi-  
5 nancial issues involved with student loan debt affect every aspect of the borrowers' lives and those  
6 of the borrowers' families; and

7       Whereas research shows that the ripple effects of student loan debt are substantial and can fuel  
8 economic, gender and racial inequality, inhibit asset accumulation, accelerate wealth gaps and cre-  
9 ate a generational divide; and

10       Whereas the student loan market is plagued with predatory practices, including with servicers  
11 that discourage borrower-friendly alternative payment plans, that fail to respond to questions and  
12 payment processing errors and that fail to provide sufficient information to borrowers regarding  
13 payments, benefits, interest rates and other charges; and

14       Whereas the State of Oregon must take action to allow borrowers to have access to affordable  
15 repayment options, loan forgiveness benefits, reliable information, quality customer service and fair  
16 treatment; and

17       Whereas a liberal construction of the provisions of this 2021 Act is necessary to effectuate the  
18 purposes of this 2021 Act; and

19       Whereas the Legislative Assembly declares as the intent of this 2021 Act to promote access to  
20 affordable repayment options and loan forgiveness benefits to residents of this state, to ensure that  
21 borrowers in this state can rely on information that student loan servicers provide about student  
22 loans and loan repayment options, to set effective minimum student loan servicing standards and  
23 protect borrowers from predatory practices and to use the state's police powers to promote the  
24 public interest and protect the health, safety and welfare of residents of this state; now, therefore,

**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.

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

2 **SECTION 1. As used in sections 1 to 11 of this 2021 Act:**

3 (1) **“Affiliate” means a person that controls, is controlled by or is under common control**  
4 **with another person.**

5 (2) **“Applicant” means a person that applies for a license to engage in business as a stu-**  
6 **dent loan servicer in this state.**

7 (3) **“Borrower” means a resident of this state who has received or agreed to pay a stu-**  
8 **dent loan or another person who shares responsibility with the resident for repaying a stu-**  
9 **dent loan.**

10 (4) **“Branch office” means a location at which a person services a student loan other than**  
11 **the person’s headquarters or principal place of business.**

12 (5) **“Business entity” means a corporation, limited liability company, partnership, limited**  
13 **partnership, business trust, joint venture or other form of business organization the con-**  
14 **stituent parts of which share a common economic interest.**

15 (6) **“Controller” means:**

16 (a) **A director, officer or general partner of a business entity;**

17 (b) **A managing member of a limited liability company;**

18 (c) **A person that has a direct or indirect right to vote 10 percent or more of the secu-**  
19 **rities of a business entity that have voting rights or the power to sell or cause the sale of**  
20 **10 percent or more of any class of a business entity’s securities;**

21 (d) **A person that has contributed 10 percent or more to a partnership’s capital or has**  
22 **the right to receive a distribution of 10 percent or more of a partnership’s capital or assets**  
23 **upon dissolution; or**

24 (e) **A person that, under the terms of a contract or because the person has an ownership**  
25 **interest in another person, has the power to manage or set policies for the other person or**  
26 **otherwise direct the other person’s operations or affairs.**

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

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

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

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

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

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

38 (c) **Perform other administrative services with respect to a student loan including, but**  
39 **not limited to, performing any of the following actions during periods in which a payment**  
40 **on a student loan is not due:**

41 (A) **Maintaining account records for the student loan;**

42 (B) **Communicating with the borrower about the student loan on behalf of the lender; or**

43 (C) **Interacting with a borrower to prevent a default on a student loan or to enable the**  
44 **activities described in paragraphs (a) and (b) of this subsection.**

45 (11) **“Special consideration borrower” means a borrower who is, or who a person that**

1 services a student loan reasonably should believe is:

2 (a) A servicemember, as defined in 50 U.S.C. 3911, as in effect on the effective date of this  
3 2021 Act, a veteran, as defined in 38 U.S.C. 101, as in effect on the effective date of this 2021  
4 Act, or a person the servicemember or veteran authorizes to act on the service member's  
5 or veteran's behalf with respect to a student loan;

6 (b) Employed in a public service job, as defined in 20 U.S.C. 1087e(m)(3), as in effect on  
7 the effective date of this 2021 Act;

8 (c) Sixty years of age or older; or

9 (d) An individual with a disability, as defined in ORS 185.110.

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

12 **SECTION 2.** (1) A person may not directly or indirectly service a student loan in this  
13 state unless the person obtains or renews a license under section 3 of this 2021 Act.

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

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

16 (b) A financial holding company or bank holding company, both as defined in ORS 706.008,  
17 if the financial holding company or bank holding company does no more than control an af-  
18 filiate or subsidiary, as defined in 12 U.S.C. 1841(d), as in effect on the effective date of this  
19 2021 Act, and does not engage in business as a student loan servicer.

20 (c) An attorney who is licensed or otherwise authorized to practice law in this state if  
21 the attorney services a student loan only incidentally in the course of practicing law.

22 (d) A public body, as defined in ORS 174.109.

23 (e) A public university listed in ORS 352.002.

24 (f) A community college, as defined in ORS 341.005.

25 (g) The Oregon Health and Science University.

26 (h) A nonprofit, private, post-secondary institution that the Higher Education Coordi-  
27 nating Commission has authorized to confer academic degrees under ORS 348.594 to 348.615.

28 (i) A state agency or a private nonprofit institution or organization that has an agree-  
29 ment with the United States Secretary of Education under section 428(b) of the Higher Ed-  
30 ucation Act of 1965 (20 U.S.C. 1078(b)), as in effect on the effective date of this 2021 Act,  
31 solely to the extent of the agency's, institution's or organization's actions as a guarantor  
32 that engages in averting defaults. The exemption set forth in this paragraph does not extend  
33 to the agency's, institution's or organization's actions in servicing a student loan.

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

36 (3) Notwithstanding subsection (2) of this section, the director may require any person  
37 to obtain a license under section 3 of this 2021 Act before the person services a student loan  
38 in this state if the director determines that the person has violated state or federal law or  
39 has engaged in a course of dealing that is fraudulent, deceptive or dishonest.

40 (4)(a) If the director reasonably believes that a person is subject to sections 1 to 11 of  
41 this 2021 Act or is engaging in or is about to engage in an act or practice that constitutes  
42 servicing a student loan in this state without first obtaining a license as provided in sub-  
43 section (1) of this section, the director may:

44 (A) Order the person to:

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

1 (ii) Affirmatively perform an act; or

2 (B) Apply to a circuit court of this state to enjoin the person from engaging in the act  
3 or practice.

4 (b) The director shall state in reasonable detail the facts on which the director bases an  
5 order under paragraph (a)(A) of this subsection.

6 (c) If a person that is subject to an order under paragraph (a)(A) of this subsection re-  
7 quests a hearing, the director shall schedule and give notice of a hearing in accordance with  
8 ORS chapter 183. If the person does not request a hearing, the director's order becomes final  
9 30 days after the date of the order.

10 (5) The director may waive or modify a requirement set forth in this section if the di-  
11 rector determines that a person's compliance with the requirement would cause the person  
12 to violate federal law.

13 **SECTION 3.** (1)(a) A person that is subject to the requirement to obtain or renew a li-  
14 cense under section 2 of this 2021 Act shall submit an application to the Director of the De-  
15 partment of Consumer and Business Services in the manner, on a form and with the  
16 contents that the director specifies by rule.

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

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

22 (A) Fingerprints from all of the applicant's controllers and managers, if the applicant is  
23 a business entity;

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

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

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

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

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

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

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

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

39 (a) Pay to the director a fee in an amount that the director specifies by rule. The director  
40 shall specify a fee that is sufficient, when aggregated with fees from other applicants, to  
41 meet the director's cost of administering sections 1 to 11 of this 2021 Act.

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

1 that the corporate surety bond or irrevocable letter of credit remains effective in the amount  
2 the director specifies.

3 (4)(a) Except as provided in paragraph (c) of this subsection, the director may not issue  
4 or renew a license under this section unless the director finds that:

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

7 (B) The application identifies a registered agent in this state;

8 (C) The application names a manager for each of the applicant's branch offices in this  
9 state, if the applicant is a business entity;

10 (D) The applicant and the applicant's controllers, registered agents and managers have  
11 not pleaded guilty or no contest in, or been convicted by, a state, federal, foreign or military  
12 court:

13 (i) In the seven years before the date of the application, if the plea or conviction was for  
14 a felony, or for a misdemeanor an essential element of which involved a false statement or  
15 dishonesty; or

16 (ii) At any time before the date of the application if the plea or conviction was for a fel-  
17 ony an element of which was fraud, dishonesty, a breach of trust or laundering a monetary  
18 instrument;

19 (E) The applicant and the applicant's controllers, registered agents and managers have  
20 demonstrated adequate financial responsibility, character and general fitness to command  
21 the confidence of the community and warrant a determination that the applicant will operate  
22 honestly, fairly and efficiently under the provisions of sections 1 to 11 of this 2021 Act;

23 (F) The applicant has paid the fee and submitted the corporate surety bond or irrevocable  
24 letter of credit required under subsection (3) of this section; and

25 (G) The applicant has passed the director's background checks and has satisfied any  
26 other criteria for evaluating the applicant's financial responsibility and fitness that the di-  
27 rector specifies by rule.

28 (b) An applicant need not report a conviction on an application under this section if the  
29 conviction was later pardoned or expunged.

30 (c)(A) The director shall:

31 (i) Find that an applicant that services a student loan under a contract with the United  
32 States Secretary of Education under 20 U.S.C. 1087f, as in effect on the effective date of this  
33 2021 Act, meets the criteria set forth in paragraph (a) of this subsection without the need  
34 to comply with the procedures set forth in subsections (2) and (3) of this section, except that  
35 the applicant must pay the fee required under subsection (3) of this section and identify a  
36 registered agent in this state or appoint the director as the applicant's registered agent; and

37 (ii) Issue and renew a license for an applicant that is described in and complies with the  
38 provisions of sub-subparagraph (i) of this subparagraph.

39 (B) Except as otherwise provided in this paragraph, a licensee that obtains a license un-  
40 der this paragraph is subject to all of the requirements and conditions set forth in sections  
41 1 to 11 of this 2021 Act.

42 (d) A licensee that obtained a license under paragraph (c) of this subsection shall notify  
43 the director in writing within seven days after the date on which the contract described in  
44 paragraph (c)(A) of this subsection expires or terminates. At the expiration or termination  
45 of the contract, the licensee becomes subject to the criteria set forth in this subsection and

1 subsections (2) and (3) of this section and, to continue to service a student loan in this state,  
 2 must meet the criteria within 30 days after the date on which the contract expires or ter-  
 3 minates. The director shall suspend the license of a licensee described in this paragraph that  
 4 fails to meet the criteria.

5 (5)(a) Except as provided in paragraph (c) of this subsection, the director may deny, re-  
 6 voke or decline to renew a license if an applicant, a licensee or a person that services a  
 7 student loan:

8 (A) Does not meet the criteria set forth in subsection (4) of this section that the director  
 9 has not waived or modified under subsection (2)(b) of this section;

10 (B) Engages in a course of conduct that violates state or federal law or that constitutes  
 11 fraudulent, deceptive or dishonest dealing;

12 (C) Has had a license to service a student loan denied or revoked in another jurisdiction;

13 (D) Fails or refuses to comply with the director's written request under section 9 of this  
 14 2021 Act to respond to a complaint against the applicant or licensee; or

15 (E) Fails or refuses to comply with a final order the director issued.

16 (b) The director shall provide a licensee with notice and an opportunity for a hearing  
 17 under ORS chapter 183 before revoking or declining to renew a license.

18 (c) The director may not deny, revoke or decline to renew a license the director issues  
 19 under subsection (4)(c) of this section, but the director may place conditions on issuing or  
 20 renewing the license.

21 (6)(a) A license that the director issues or renews under this section expires on Decem-  
 22 ber 31 of the calendar year in which the director issued or renewed the license and is not  
 23 transferable or assignable. A licensee shall display a copy of the license at the licensee's  
 24 principal place of business and at each branch office in this state at or from which the  
 25 licensee services a student loan.

26 (b) An applicant that intends to renew a license shall apply for the renewal at least 30  
 27 days before the license expires.

28 (c) A licensee may reinstate a license that has expired only if the licensee applies to re-  
 29 new the license under this section within the time permitted by the Nationwide Multistate  
 30 Licensing System.

31 (d) A licensee may not service a student loan during a period in which the licensee has  
 32 applied to reinstate a license unless the director has given conditional approval to the  
 33 licensee. The conditional approval may specify which accounts the licensee may service and  
 34 which services the licensee may provide during the period in which the licensee's application  
 35 for reinstatement is pending.

36 (e) A licensee that ceases servicing student loans in this state or otherwise ceases  
 37 transacting business in this state shall, within 10 days after doing so, surrender to the di-  
 38 rector any unexpired license the director issued under this section. A licensee's surrender  
 39 of a license under this paragraph does not reduce or eliminate any civil or criminal liability  
 40 that arises from any of the licensee's acts or omissions that occurred before the surrender.

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

44 (2)(a) If a licensee does not maintain a principal place of business in this state, the  
 45 licensee shall nevertheless designate a registered agent in this state. The registered agent

1 must be available to receive on the licensee's behalf any notice, demand or service of process  
2 permitted by law to be given, made or delivered to, or served upon, the licensee.

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

6 (3) A licensee may not use or operate under an assumed business name unless the  
7 licensee first registers the assumed business name under ORS chapter 648 and lists the name  
8 on an application under section 3 of this 2021 Act or in a notice to the director under section  
9 6 of this 2021 Act.

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

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

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

24 (A) The Department of Consumer and Business Services; and

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

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

34 (4) If, 60 days after the date on which the director took possession of a licensee's prop-  
35 erty, business and assets under subsection (2) of this section, the licensee has not returned  
36 to compliance with the applicable standards described in subsection (1) of this section, the  
37 director shall liquidate the licensee's property, business and assets and revoke the licensee's  
38 license to service student loans in this state. If the director is not the receiver for the  
39 licensee's property, business and assets, the director shall apply to the circuit court in the  
40 county in which the licensee's principal place of business in this state is located for an order  
41 to appoint the director or another person as receiver.

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

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

1 (B) Opens a branch office that the licensee did not list in an application under section 3  
2 of this 2021 Act.

3 (b) In a notice under paragraph (a) of this subsection, the licensee shall list, as applica-  
4 ble:

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

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

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

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

11 (B) Any material change occurs in the information that the licensee submitted in an  
12 application under section 3 of this 2021 Act.

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

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

17 (A) Filing for bankruptcy or reorganization;

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

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

21 (i) Demands that the licensee cease and desist from any act;

22 (ii) Suspends or revokes a license or registration; or

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

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

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

27 (F) Any other change in the licensee's operations or governance occurs in a manner or  
28 with an effect that the director determines by rule is significant enough to warrant the  
29 licensee notifying the director.

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

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

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

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

41 (a) Each licensee in this state;

42 (b) Any person that services a student loan in this state, if the person is subject to  
43 sections 1 to 11 of this 2021 Act or if the director required the person to obtain a license  
44 under section 2 (3) of this 2021 Act; and

45 (c) Any person that had a license that the director withdrew, canceled, suspended, con-



1 **ditioned or revoked, if the person continues to service a student loan.**

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

4 **(b) The director may charge and collect from a licensee or a person the director exam-**  
 5 **ines under this section the costs the director incurs in conducting the examination.**

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

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

9 **(b) Enter into agreements or relationships with other government officials or regulatory**  
 10 **associations to share resources, to use and create standardized methods, procedures, docu-**  
 11 **ments, databases, records, information or evidence, to reduce the director's regulatory bur-**  
 12 **den or to improve efficiency.**

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

17 **(d) Accept and rely on examination or investigation reports from other government offi-**  
 18 **cial in this or another state.**

19 **(4) Books, accounts, papers, records, files, correspondence, contracts and agreements,**  
 20 **disclosures, documentation and other information, material or evidence the director obtains**  
 21 **in an examination under this section is confidential and subject to the provisions of ORS**  
 22 **705.137, except that a borrower may request to inspect material related to the borrower's**  
 23 **student loan that the director by rule specifies is available for inspection. The director shall**  
 24 **authenticate the borrower's identity before disclosing any material to the borrower.**

25 **(5) The director may adopt rules for the purpose of implementing sections 1 to 11 of this**  
 26 **2021 Act.**

27 **SECTION 8. (1) Except as otherwise required under federal law, in a federal student loan**  
 28 **agreement or in a contract between the federal government and a person that services a**  
 29 **student loan, a person that services a student loan shall:**

30 **(a) Assess any fee that the person may assess against a borrower within 45 days after**  
 31 **the borrower incurs the fee. Any fee that the person assesses for a late payment must be**  
 32 **reasonable and proportional to the total costs the person incurs as a result of the late pay-**  
 33 **ment and must be a percentage, not to exceed six percent, of the amount past due.**

34 **(b) Accept and credit, or treat as credited, to the borrower's account all amounts the**  
 35 **person receives at the address to which the borrower has been instructed to send payments**  
 36 **or notifications of payment on the borrower's student loan. The person must credit the**  
 37 **payment, or treat the payment as credited, within one business day after receiving the pay-**  
 38 **ment or notification of payment if the borrower has provided sufficient information to credit**  
 39 **the account. If the person uses the scheduled method of accounting and the person receives**  
 40 **a regularly scheduled payment before the scheduled due date, the person shall credit the**  
 41 **payment to the borrower's account not later than the scheduled due date. The person shall**  
 42 **credit as timely any payment the person receives on or before 11:59 p.m. on the due date.**

43 **(c) Process all paperwork in a timely manner consistent with the requirements of federal**  
 44 **law, correct promptly any errors the person makes and refund promptly any fees the person**  
 45 **assesses against the borrower in error.**

1 (d) Provide appropriate training and needed access to information, forms, applications  
2 and other materials for the person's employees or agents that is sufficient to allow the em-  
3 ployees or agents to efficiently and accurately process applications, requests and other  
4 communications from borrowers, give borrowers information and materials necessary to re-  
5 ceive applicable benefits and protections for federal student loans, as described in 20 U.S.C.  
6 1070 et seq., as in effect on the effective date of this 2021 Act, and update borrowers on the  
7 status of applications and communications the borrowers have submitted.

8 (e) Follow a borrower's directions on how to allocate a partial payment, or an amount  
9 paid that exceeds the amount due for a periodic payment, on a student loan among any loans  
10 or accounts the borrower has with the person until the borrower indicates a different allo-  
11 cation, unless otherwise provided in federal law or in the terms of the student loan. If the  
12 borrower does not direct an allocation, the person shall allocate an amount paid that exceeds  
13 the amount due for the periodic payment to the loan with the highest interest rate and al-  
14 locate a partial payment in a manner that minimizes late fees, negative credit reports or  
15 other negative consequences for the borrower, unless the borrower specifies otherwise. If the  
16 borrower has more than one loan that is delinquent, the person shall allocate a partial pay-  
17 ment, as appropriate, to the loan that is most delinquent or in a manner that satisfies as  
18 many obligations as possible if the loans are at equal stages of delinquency.

19 (f) Maintain adequate records of each student loan transaction for not less than two  
20 years, or a period otherwise specified by law, after a final payment on a student loan or after  
21 the person sells, assigns or otherwise transfers the student loan, whichever occurs first. At  
22 the request of the Director of the Department of Consumer and Business Services and within  
23 five days after the request or within the time the director specifies in the request, the person  
24 shall make the records available to the director or send the records to the director in the  
25 manner the director specifies by rule.

26 (g) Provide specialized training to any of the person's employees or agents that advise  
27 special consideration borrowers about student loan repayment programs, services, benefits,  
28 protections or risks sufficient to enable the employee or agent to provide accurate and timely  
29 information to each category of special consideration borrower.

30 (h) Provide information and institute procedures to ensure that a borrower is not subject  
31 to late fees, negative reports to a consumer reporting agency or a loss of any benefit or  
32 protection available to the borrower under federal law or the terms of a student loan as a  
33 result of the person selling, assigning or otherwise transferring the borrower's student loan  
34 to another person. If the sale, assignment or transfer results in a change to the identity of  
35 the party to which the borrower must send payments or communications concerning the  
36 student loan, the person shall notify the borrower in writing, at least 15 days before the next  
37 payment is due, of:

38 (A) The identity of the other person and the other person's license number, if the other  
39 person is a licensee;

40 (B) The name, address, telephone number, website address and other contact information  
41 for the other person;

42 (C) The effective date of the sale, assignment or transfer;

43 (D) The date on which the person will stop accepting payments on the student loan; and

44 (E) The date on which the other person will begin accepting payments on the student  
45 loan.

1 (i) Provide to any other person to which the person sells, assigns or transfers a student  
 2 loan within 45 days after the sale, assignment or transfer all information that is necessary  
 3 to properly service the student loan. For purposes of this paragraph, the information re-  
 4 quired is, at a minimum:

5 (A) A schedule of all transactions the person previously credited to or debited from the  
 6 borrower's student loan account;

7 (B) A copy of the promissory agreement for the student loan;

8 (C) Copies of all communications to and from the borrower, together with any notes,  
 9 comments or other written materials that are related to the communications;

10 (D) Appropriate output from any database or other record the person maintained con-  
 11 cerning the student loan in a format that the other person may use for servicing the student  
 12 loan, not including any of the person's proprietary or confidential information or data;

13 (E) Copies of any documents the borrower provided to the person; and

14 (F) Any other information that is necessary to compile a borrower's payment history or  
 15 assess the borrower's qualifications for loan forgiveness.

16 (2) A person that services a student loan may not, directly or indirectly:

17 (a) Employ any device, scheme or artifice to defraud another person;

18 (b) Knowingly make an untrue statement of a material fact or omit from a statement a  
 19 material fact that is necessary to make the person's statement true in light of the circum-  
 20 stances in which the person makes the statement, or misrepresent the amount, nature or  
 21 terms of any fee or payment due or claimed to be due on a student loan or the terms and  
 22 conditions of a loan agreement or the borrower's obligations under the loan agreement;

23 (c) Obtain property by fraud or misrepresentation;

24 (d) Take unreasonable advantage of a borrower's:

25 (A) Lack of understanding of the material risks, costs or conditions of a student loan;

26 (B) Inability to protect the borrower's interests in selecting or participating in a student  
 27 loan or a feature, term or condition of a student loan; or

28 (C) Reasonable reliance on the person to act in the borrower's interest;

29 (e) Knowingly misapply or recklessly apply payments to the outstanding balance of a  
 30 student loan;

31 (f) Engage in an act, practice or course of business that operates or that the person in-  
 32 tends to operate as a fraud or deceit upon a borrower or that materially interferes with a  
 33 borrower's ability to understand a term or condition of a student loan;

34 (g) Fail to accurately report a borrower's payment performance to at least one consumer  
 35 reporting agency that compiles and maintains files on consumers on a nationwide basis, as  
 36 defined in 15 U.S.C. 1681a(p), as in effect on the effective date of this 2021 Act, if the person  
 37 must report or volunteers to report to a consumer reporting agency;

38 (h) Make a negative report to a consumer reporting agency, deem a borrower ineligible  
 39 for a benefit, impose a late fee, capitalize interest or cause other financial injury or negative  
 40 consequences for a borrower if a material delay in crediting a borrower's payment occurs  
 41 as a result of a material change in the person's mailing address, office location or payment  
 42 handling procedures;

43 (i) Refuse or fail to communicate with a borrower's representative for whom the bor-  
 44 rower has provided a signed written authorization to act on the borrower's behalf, except  
 45 that the person may condition communication with the representative on the borrower's or

1 representative's compliance with reasonable procedures to verify the authorization or to  
 2 protect the borrower from fraud or abusive practices;

3 (j) Make or file with the Department of Consumer and Business Services, or cause to be  
 4 made or filed with the department, a statement, report or document that the person knows  
 5 is false in any material respect or manner;

6 (k) Engage in an unfair or deceptive practice toward a special consideration borrower or  
 7 misrepresent or omit material information from the person's communication or other  
 8 interaction with a special consideration borrower concerning:

9 (A) The availability of a program or protection that applies to the special consideration  
 10 borrower;

11 (B) The amount, nature or terms of any fee or payment due or claimed to be due on a  
 12 student loan;

13 (C) The terms and conditions of the special consideration borrower's student loan  
 14 agreement; or

15 (D) The special consideration borrower's obligations under the student loan; or

16 (L) Fail to respond to a consumer complaint, or to communication from the student loan  
 17 conciliator appointed or designated under section 11 of this 2021 Act, within 30 calendar days  
 18 or within a reasonable time that the student loan conciliator specifies in the communication.  
 19 The person may request in writing that the student loan conciliator allow not more than 30  
 20 additional calendar days within which to respond if in the request the person explains why  
 21 the additional time is reasonable and necessary.

22 (3) Subsections (1) and (2) of this section do not apply to:

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

24 (b) A financial holding company or bank holding company, both as defined in ORS 706.008,  
 25 if the financial holding company or bank holding company does no more than control an af-  
 26 filiate or subsidiary, as defined in 12 U.S.C. 1841(d), as in effect on the effective date of this  
 27 2021 Act, and does not engage in business as a student loan servicer.

28 (c) An attorney who is licensed or otherwise authorized to practice law in this state if  
 29 the attorney services a student loan only incidentally in the course of practicing law.

30 (d) A public body, as defined in ORS 174.109.

31 (e) A public university listed in ORS 352.002.

32 (f) A community college, as defined in ORS 341.005.

33 (g) The Oregon Health and Science University.

34 (h) A nonprofit, private, post-secondary institution that the Higher Education Coordi-  
 35 nating Commission has authorized to confer academic degrees under ORS 348.594 to 348.615.

36 **SECTION 9.** (1) If the Director of the Department of Consumer and Business Services  
 37 receives a complaint concerning a person that services a student loan, the director:

38 (a) Shall notify the person of the complaint, provide a copy of the complaint in the notice  
 39 and require the person to respond to the complaint and to the director within 30 days after  
 40 the date of the notice;

41 (b) May investigate the complaint and require the person to provide books, accounts,  
 42 papers, records, files, correspondence, contracts and agreements, disclosures, documentation  
 43 and other information, material or evidence necessary for the director's investigation; and

44 (c) May investigate the person and the person's policies and practices with respect to  
 45 servicing a student loan and require the person to provide books, accounts, papers, records,

1 files, documentation and other information, material or evidence necessary for the director's  
 2 investigation.

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

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

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

12 (4) This section does not apply to:

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

14 (b) A financial holding company or bank holding company, both as defined in ORS 706.008,  
 15 if the financial holding company or bank holding company does no more than control an af-  
 16 filiate or subsidiary, as defined in 12 U.S.C. 1841(d), as in effect on the effective date of this  
 17 2021 Act, and does not engage in business as a student loan servicer.

18 **SECTION 10.** (1) If, after conducting an investigation, the Director of the Department  
 19 of Consumer and Business Services determines that a person that services a student loan  
 20 has violated sections 1 to 11 of this 2021 Act, violated a rule the director adopted or an order  
 21 the director issued under sections 1 to 11 of this 2021 Act or violated another applicable law,  
 22 the director may order the person to:

23 (a) Cease and desist from any act that constitutes a violation of sections 1 to 11 of this  
 24 2021 Act.

25 (b) Resolve any complaint the director received under section 9 of this 2021 Act and pay  
 26 the borrower that submitted the complaint any damages to which the borrower would be  
 27 entitled under law.

28 (c) Pay a borrower any amount the person received from the borrower as compensation  
 29 while engaging in any action that constituted a violation of sections 1 to 11 of this 2021 Act.

30 (2)(a) In addition to and not in lieu of any other penalty provided by law, the director  
 31 may impose a civil penalty under ORS 183.745 in an amount of not more than \$5,000 for each  
 32 instance in which a person violates, aids or abets another person in violating, or procures a  
 33 violation of sections 1 to 11 of this 2021 Act or an order the director issues under sections  
 34 1 to 11 of this 2021 Act.

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

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

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

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

1       **SECTION 11.** (1) The Director of the Department of Consumer and Business Services  
 2 shall appoint or designate a student loan conciliator within the Department of Consumer and  
 3 Business Services for the purposes set forth in subsection (2) of this section.

4       (2) The student loan conciliator that the director appoints or designates under subsection  
 5 (1) of this section shall, in consultation with the director or with other individuals the di-  
 6 rector designates:

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

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

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

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

18       (e) Compile and evaluate data necessary to determine how many borrowers are entitled  
 19 to loan discharge or forgiveness and how many have received or are awaiting the discharge  
 20 or forgiveness.

21       (f) Monitor and analyze the substance and implementation of federal, state and local  
 22 laws, regulations, rules and policies related to student loans and borrowers and recommend  
 23 any changes the student loan conciliator deems necessary.

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

26       (h) Publicize the student loan conciliator's availability and the services that the student  
 27 loan conciliator provides to borrowers and other persons that participate in activities related  
 28 to student loans.

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

35       (j) Request, receive and compile any data and take any other action that is necessary to  
 36 implement the duties described in this section. The director shall assist the student loan  
 37 conciliator in compelling production, by examination, subpoena or other appropriate process,  
 38 of any information or data that is reasonably required under this paragraph.

39       (3) By July 1 of each year, the director shall submit a report to a committee of the  
 40 Legislative Assembly related to higher education that:

41       (a) Summarizes the student loan conciliator's activities in implementing this section;

42       (b) Evaluates the effectiveness of the student loan conciliator and the student loan  
 43 conciliator's activities in implementing this section and makes recommendations for any  
 44 changes that are necessary in the student loan conciliator's powers or responsibilities;

45       (c) Includes samples of representative complaints from borrowers concerning persons

1 who service student loans in this state and the resolutions, if any, to the complaints; and

2 (d) Recommends changes in law or rule or in the application or implementation of laws  
3 or rules related to servicing student loans that are necessary to achieve regulatory compli-  
4 ance among student loan servicers and otherwise to reduce the incidence of borrowers'  
5 problems and complaints.

6 SECTION 12. Sections 1 to 11 of this 2021 Act apply to actions that a person takes to  
7 service a student loan on or after the operative date specified in section 13 of this 2021 Act.

8 SECTION 13. (1) Sections 1 to 11 of this 2021 Act become operative on July 1, 2022.

9 (2) The Director of the Department of Consumer and Business Services may adopt rules  
10 and take any other action before the operative date specified in subsection (1) of this section  
11 that is necessary to enable the director, on and after the operative date specified in sub-  
12 section (1) of this section, to undertake and exercise all of the duties, functions and powers  
13 conferred on the director by sections 1 to 11 of this 2021 Act.

14 SECTION 14. The Director of the Department of Consumer and Business Services shall  
15 first submit the report required under section 11 (3) of this 2021 Act by July 1, 2023.

16 SECTION 15. This 2021 Act being necessary for the immediate preservation of the public  
17 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect  
18 on its passage.

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