

Senate Bill 485

Sponsored by Senator TAYLOR, Representative POWER (Pre-session 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, 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 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.

Becomes operative on 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 **Be It Enacted by the People of the State of Oregon:**

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

4
5 (1) **"Affiliate" means a person that controls, is controlled by or is under common control**
6 **with another person.**

7 (2) **"Applicant" means a person that applies for a license to engage in business as a stu-**
8 **dent loan servicer in this state.**

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

12 (4) **"Branch office" means a location at which a business entity services a student loan**
13 **other than the business entity's headquarters or principal place of business.**

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

17 (6) **"Controller" means:**

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

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

20 (c) **A person that has a direct or indirect right to vote 10 percent or more of the secu-**
21 **rities of a business entity that have voting rights or the power to sell or cause the sale of**
22 **10 percent or more of any class of a business entity's securities;**

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

26 (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.

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

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

6 (8) "Manager" means an individual who has supervisory authority over employees and
7 operations at a business entity's branch office or other business location.

8 (9) "Person" means an individual or a business entity.

9 (10) "Service a student loan" means to:

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

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

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

17 (A) Maintaining account records for the student loan;

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

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

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

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

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

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

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

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

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

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

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

36 (g) The Oregon Health and Science University.

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

39 (i) A state agency or a private nonprofit institution or organization that has an agree-
40 ment with the United States Secretary of Education under section 428(b) of the Higher Ed-
41 ucation Act of 1965 (20 U.S.C. 1078(b)), solely to the extent of the agency's, institution's or
42 organization's actions as a guarantor that engages in averting defaults. The exemption set
43 forth in this paragraph does not extend to the agency's, institution's or organization's
44 actions in servicing a student loan.

45 (j) A person that the Director of the Department of Consumer and Business Services

1 designates by rule or order as exempt.

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

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

10 (A) Order the person to:

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

12 (ii) Affirmatively perform an act; or

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

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

17 (c) If a person that is subject to an order under paragraph (a)(A) of this subsection re-
18 quests a hearing, the director shall schedule and give notice of a hearing in accordance with
19 ORS chapter 183. If the person does not request a hearing, the director's order becomes final
20 30 days after the date of the order.

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

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

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

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

33 (A) Fingerprints from all of the applicant's controllers and managers;

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

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

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

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

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

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

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

1 **essary for evaluating or approving the application for renewal.**

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

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

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

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

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

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

18 **(C) The application names a manager for each of the applicant’s branch offices in this**
 19 **state;**

20 **(D) The applicant and the applicant’s controllers, registered agents and managers have**
 21 **not pleaded guilty or no contest in, or been convicted by, a state, federal, foreign or military**
 22 **court:**

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

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

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

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

35 **(G) The applicant has passed the director’s background checks and has satisfied any**
 36 **other criteria for evaluating the applicant’s financial responsibility and fitness that the di-**
 37 **rector specifies by rule.**

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

40 **(c)(A) The director shall:**

41 **(i) Find that an applicant that services a student loan under a contract with the United**
 42 **States Secretary of Education under 20 U.S.C. 1087f meets the criteria set forth in paragraph**
 43 **(a) of this subsection without the need to comply with the procedures set forth in sub-**
 44 **sections (2) and (3) of this section, except that the applicant must pay the fee required under**
 45 **subsection (3) of this section and identify a registered agent in this state or appoint the di-**

1 rector as the applicant's registered agent; and

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

4 (B) Except as otherwise provided in this paragraph, a licensee that obtains a license un-
5 der this paragraph is subject to all of the requirements and conditions set forth in sections
6 1 to 11 of this 2021 Act.

7 (d) A licensee that obtained a license under paragraph (c) of this subsection shall notify
8 the director in writing within seven days after the date on which the contract described in
9 paragraph (c)(A) of this subsection expires or terminates. At the expiration or termination
10 of the contract, the licensee becomes subject to the criteria set forth in this subsection and
11 subsections (2) and (3) of this section and, to continue to service a student loan in this state,
12 must meet the criteria within 30 days after the date on which the contract expires or ter-
13 minates. The director shall suspend the license of a licensee described in this paragraph that
14 fails to meet the criteria.

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

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

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

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

23 (D) Fails or refuses to comply with the director's written request under section 9 of this
24 2021 Act to respond to a complaint against the applicant or licensee; or

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

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

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

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

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

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

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

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

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

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

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

16 (3) A licensee may not use or operate under an assumed business name unless the
17 licensee first registers the assumed business name under ORS chapter 648 and lists the name
18 on an application under section 3 of this 2021 Act or in a notice to the director under section
19 6 of this 2021 Act.

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

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

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

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

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

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

44 (4) If, 60 days after the date on which the director took possession of a licensee's prop-
45 erty, business and assets under subsection (2) of this section, the licensee has not returned

1 to compliance with the applicable standards described in subsection (1) of this section, the
 2 director shall liquidate the licensee's property, business and assets and revoke the licensee's
 3 license to service student loans in this state. If the director is not the receiver for the
 4 licensee's property, business and assets, the director shall apply to the circuit court in the
 5 county in which the licensee's principal place of business in this state is located for an order
 6 to appoint the director or another person as receiver.

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

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

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

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

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

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

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

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

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

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

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

27 (A) Filing for bankruptcy or reorganization;

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

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

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

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

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

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

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

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

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

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

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

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

6 (a) Each licensee in this state;

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

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

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

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

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

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

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

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

27 (d) Accept and rely on examination or investigation reports from other government offi-
28 cials in this or another state.

29 (4) Books, accounts, papers, records, files, correspondence, contracts and agreements,
30 disclosures, documentation and other information, material or evidence the director obtains
31 in an examination under this section is confidential and subject to the provisions of ORS
32 705.137, except that a borrower may request to inspect material related to the borrower's
33 student loan that the director by rule specifies is available for inspection. The director shall
34 authenticate the borrower's identity before disclosing any material to the borrower.

35 (5) The director may adopt rules for the purpose of implementing sections 1 to 11 of this
36 2021 Act.

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

40 (a) Assess any fee that the person may assess against a borrower within 45 days after
41 the borrower incurs the fee.

42 (b) Accept and credit, or treat as credited, to the borrower's account all amounts the
43 person receives at the address to which the borrower has been instructed to send payments
44 or notifications of payment on the borrower's student loan. The person must credit the
45 payment, or treat the payment as credited, within one business day after receiving the pay-

1 **ment or notification of payment if the borrower has provided sufficient information to credit**
2 **the account. If the person uses the scheduled method of accounting and the person receives**
3 **a regularly scheduled payment before the scheduled due date, the person shall credit the**
4 **payment to the borrower's account not later than the scheduled due date.**

5 **(c) Correct promptly any errors the person makes and refund promptly any fees the**
6 **person assesses against the borrower in error.**

7 **(d) Maintain adequate records of each student loan transaction for not less than two**
8 **years, or a period otherwise specified by law, after a final payment on a student loan or after**
9 **the person assigns the student loan, whichever occurs first. At the request of the Director**
10 **of the Department of Consumer and Business Services and within five days after the request**
11 **or the within the time the director specifies in the request, the person shall make the re-**
12 **records available to the director or send the records to the director in the manner the director**
13 **specifies by rule.**

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

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

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

21 **(c) Obtain property by fraud or misrepresentation;**

22 **(d) Knowingly misapply or recklessly apply payments to the outstanding balance of a**
23 **student loan;**

24 **(e) Engage in an act, practice or course of business that operates or that the person in-**
25 **tends to operate as a fraud or deceit upon another person;**

26 **(f) Make or file with the Department of Consumer and Business Services, or cause to be**
27 **made or filed with the department, a statement, report or document that the person knows**
28 **is false in any material respect or manner; or**

29 **(g) Fail to respond to a consumer complaint, or to communication from the ombudsman**
30 **appointed or designated under section 11 of this 2021 Act, within 30 calendar days or within**
31 **a reasonable time that the student loan ombudsman specifies in the communication. The**
32 **person may request in writing that the student loan ombudsman allow not more than 30**
33 **additional calendar days within which to respond if in the request the person explains why**
34 **the additional time is reasonable and necessary.**

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

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

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

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

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

44 **(e) A public university listed in ORS 352.002.**

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

1 (g) The Oregon Health and Science University.

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

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

5 (a) Shall notify the person of the complaint, provide a copy of the complaint in the notice
6 and require the person to respond to the complaint and to the director within 30 days after
7 the date of the notice;
8

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

12 (c) May investigate the person and the person's policies and practices with respect to
13 servicing a student loan and require the person to provide books, accounts, papers, records,
14 files, documentation and other information, material or evidence necessary for the director's
15 investigation.

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

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

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

25 (4) This section does not apply to:

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

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

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

36 (a) Cease and desist from any act that constitutes a violation of sections 1 to 11 of this
37 2021 Act.

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

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

43 (2)(a) In addition to and not in lieu of any other penalty provided by law, the director
44 may impose a civil penalty under ORS 183.745 in an amount of not more than \$5,000 for each
45 instance in which a person violates, aids or abets another person in violating, or procures a

1 violation of sections 1 to 11 of this 2021 Act or an order the director issues under sections
2 1 to 11 of this 2021 Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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