

## CHAPTER 88

( HB 494 )

AN ACT relating to student education loan servicing.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. SUBTITLE 12 OF KRS CHAPTER 286 IS ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

*The General Assembly finds and declares that:*

- (1) *Student education loans in Kentucky affect a significant portion of citizens;*
- (2) *For student education loan borrowers, and the countless others who are making student education loan payments, student education loan financial issues affect every aspect of their lives, from buying a home to choosing a career and from starting a family to saving for retirement; and*
- (3) *Student education loan debt casts a shadow that many Kentuckians cannot escape.*

➔SECTION 2. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

*As used in this subtitle, unless the context requires otherwise:*

- (1) *"Affiliate" means any person who directly, or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with another person;*
- (2) *"Applicant" means a person filing an application or renewal application for a license under this subtitle;*
- (3) *"Borrower" means a person who:*
  - (a) *Has received, or agreed to pay, a student education loan; or*
  - (b) *Shares responsibility for repaying a student education loan with a person described in paragraph (a) of this subsection;*
- (4) *"Borrower with a disability" means a borrower who the servicer knows, or reasonably should know, is a person who has a documented disability;*
- (5) *"Borrower working in public service" means a borrower who is employed in a public service job as defined in the Higher Education Act, 20 U.S.C. sec. 1087e(m), as amended, and administrative regulations promulgated thereunder;*
- (6) *"Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise;*
- (7) *"Director" means a person appointed or elected to sit on a board that manages the affairs of a corporation or other organization by electing and exercising control over its officers;*
- (8) *"In this state" means any activity of a person relating to servicing student education loans that originates:*
  - (a) *Inside this state and is directed to persons inside or outside this state; or*
  - (b) *Outside this state and is directed to persons inside this state;*
- (9) *"Licensee" means a person licensed as a student education loan servicer under this subtitle;*
- (10) *"Managing officer" means a natural person responsible for overseeing daily operations of a licensee;*
- (11) *"Military borrower" means a borrower who is:*
  - (a) *A service member, as defined in the Service Member Civil Relief Act, 50 U.S.C. sec. 3911, as amended;*
  - (b) *A veteran, as defined in 38 U.S.C. sec. 101, as amended; or*
  - (c) *Any other member or veteran of the United States Armed Forces, including the National Guard and any reserve component of the United States Armed Forces;*

- (12) *"Student education loan" means any loan to a borrower to finance postsecondary education or expenses related to postsecondary education;*
- (13) *"Student education loan servicer" or "servicer":*
- (a) *Means a person engaged in the business of servicing student education loans in this state; and*
  - (b) *Includes licensees and persons that are exempt from licensure under this subtitle; and*
- (14) *"Student education loan servicing" or "servicing" means participating in any of the following activities related to a student education loan:*
- (a) *Performing both of the following:*
    1. *Receiving:*
      - a. *Payments from a borrower; or*
      - b. *Notification that a borrower made a scheduled periodic payment; and*
    2. *Applying payments to the borrower's account pursuant to the terms of a student education loan or the contract governing the servicing of the loan;*
  - (b) *During a period when no payment is required on a student education loan, performing both of the following:*
    1. *Maintaining account records for the student education loan; and*
    2. *Communicating with the borrower regarding the student education loan on behalf of the owner of the student education loan promissory note;*
  - (c) *Communicating with a borrower regarding the borrower's student education loan with the goal of facilitating the borrower to:*
    1. *Make payments on the student education; or*
    2. *Apply for a qualified forbearance program; or*
  - (d) *Facilitating the activities described in paragraph (a) or (b) of this subsection.*

➔SECTION 3. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "federal student education loan" means any:*
- (a) *Student education loan issued pursuant to the William D. Ford Federal Direct Loan Program established under 20 U.S.C. sec. 1087a et seq., as amended;*
  - (b) *Student education loan issued pursuant to the Federal Family Education Loan Program, which was purchased by the United States pursuant to the federal Ensuring Continued Access to Student Loans Act of 2008, Pub. L. No. 110-227, and is presently owned by the United States; or*
  - (c) *Other student education loan issued pursuant to a federal program that is identified by order of the commissioner as a federal student education loan.*
- (2) *Except as provided in subsections (3) and (4) of this section, no person shall engage in the business of servicing student education loans in this state without having first obtained a license as a student education loan servicer in accordance with this subtitle.*
- (3) *The following shall be exempt from the provisions of this subtitle:*
- (a) *A bank, trust company, or industrial loan company doing business under the authority of, or in accordance with, a license, certificate, or charter, issued by the United States, or any state, district, territory, or commonwealth of the United States, that is authorized to transact business in this state;*
  - (b) *A wholly owned subsidiary of any entity exempt under paragraph (a) of this subsection;*
  - (c) *A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in this state;*
  - (d) *A savings and loan association, savings bank, or credit union organized under the laws of this or any other state that is authorized to transact business in this state;*

- (e) *A public postsecondary education institution or private nonprofit postsecondary education institution servicing a student education loan extended to a borrower;*
  - (f) *The United States, or any state, district, territory, commonwealth, or possession of the United States;*
  - (g) *Any city, county, or other political subdivision of any entity exempt under paragraph (f) of this subsection; and*
  - (h) *Any agency, division, or corporate instrumentality of any entity exempt under paragraph (f) or (g) of this subsection.*
- (4) *A person servicing federal student education loans in this state shall:*
- (a) *As of the effective date of this Act, automatically be deemed, by operation of law, as having been licensed by the commissioner to service federal student education loans in this state;*
  - (b) *Provide notice to the commissioner that the person is servicing federal student education loans in this state;*
  - (c) *Comply with this subtitle, with the exception of Section 4 of this Act; and*
  - (d) *Not be authorized to engage in the business of servicing non-federal student education loans in this state unless the person is:*
    - 1. *Exempt from this subtitle under subsection (3) of this section; or*
    - 2. *Licensed as a student education loan servicer in accordance with this subtitle.*

➔SECTION 4. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "substantial stockholder" means a person owning or controlling, directly or indirectly, ten percent (10%) or more of the total outstanding stock of a corporation.*
- (2) *A person applying for a license as a student education loan servicer under this subtitle shall:*
  - (a) *Submit a completed application to, and in a form prescribed by, the commissioner, which shall include:*
    - 1. *The name of the applicant and each of the applicant's affiliates and operating subsidiaries engaged in business as a student education loan company or a student education loan broker;*
    - 2. *The name under which the applicant will conduct business in Kentucky;*
    - 3. *The physical address of the applicant's principal office and branch or branches;*
    - 4. *The name, residence, and business address of each person having an interest in the business as a managing officer, director, general partner, or managing member, as may be applicable, specifying the capacity and title of each;*
    - 5. *A description of the activities of the applicant, in such detail and for such periods as the commissioner may require;*
    - 6. *An affirmation of financial solvency, noting any capitalization and access to credit as the commissioner may require;*
    - 7. *A financial statement prepared by a certified public accountant, the accuracy of which is sworn to under oath before a notary public by an officer or other representative of the applicant who is authorized to execute such documents;*
    - 8. *An affirmation that the applicant, or its managing officers, directors, general partners, and managing members, as may be applicable, are at least twenty-one (21) years of age;*
    - 9. *Information as to the character, fitness, financial and business responsibility, background, and experience of the applicant, and its managing officers, directors, general partners, and managing members, as may be applicable;*
    - 10. *The name of at least one (1) of the applicant's managing officers who has a minimum of at least two (2) years experience in the student education loan servicing industry; and*

- 11. Any additional detail or information as the commissioner deems necessary;*
- (b) Maintain the minimum net worth requirements prescribed by the commissioner in administrative regulation or order, which may include the following:*
- 1. Applicable reserves consisting of high-quality investments; and*
  - 2. A surety bond;*
- (c) 1. Submit an investigation fee prescribed by the commissioner in administrative regulation which shall be adjusted by order five (5) years from the effective date of this Act and every five (5) years thereafter.*
- 2. An adjustment made pursuant to subparagraph 1. of this paragraph may be based on the nonseasonally adjusted Consumer Price Index for all Urban Consumers (CPI-U), U.S. City Average, All Items, as published by United States Bureau of Labor Statistics; and*
- (d) 1. Submit the name, address, telephone number, and electronic mail address of an agent for service of process.*
- 2. The commissioner shall be notified in writing at least five (5) days prior to any change in the status of the agent for service of process.*
- (3) The commissioner may deny an application for a license as a student education loan servicer if:*
- (a) A false statement of material fact has been made on the application;*
- (b) A material requirement for issuance of the license has not been met;*
- (c) The commissioner determines that the applicant has not submitted a completed application;*
- (d) The applicant or any managing officer, director, general partner, or managing member, or substantial stockholder, as may be applicable, of the applicant:*
- 1. Within the last ten (10) years:*
    - a. To the extent permitted under KRS 335B.020, has a felony conviction; or*
    - b. Has committed any act involving dishonesty, fraud, or deceit, but only if the act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this subtitle;*
  - 2. Has violated or is not in material compliance with:*
    - a. Any provision of this subtitle;*
    - b. An administrative regulation promulgated pursuant to this subtitle;*
    - c. An order of the commissioner; or*
    - d. Any similar regulatory scheme of this or a foreign jurisdiction;*
  - 3. Has been held liable within the past seven (7) years by final judgment in any civil action or by administrative judgment by any public agency related to a financial matter;*
  - 4. Has had, or has been, a managing officer, director, partner, managing member, or substantial stockholder of an entity which had a license or registration revoked by the commissioner or any other regulator or jurisdiction; or*
  - 5. Has otherwise been an agent or employee of an entity which has had a license or registration revoked by the commissioner and the person was found by the commissioner to bear responsibility in connection with the revocation; or*
- (e) The commissioner is unable to find that the financial responsibility, experience, character, and general fitness of the applicant, together with its managing officers, directors, general partners, managing members, and substantial stockholders, as may be applicable, command the confidence of the community and warrant belief that the business will be operated fairly, honestly, and efficiently within the purposes of this subtitle.*
- (4) The commissioner may deem an application abandoned if an applicant fails to provide or respond to a request for additional information within sixty (60) days of the request.*

(5) *Except as provided in Section 5 of this Act, a license issued under this subtitle shall not be transferable.*

➔SECTION 5. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

(a) *"Control":*

1. *Means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a licensee, whether through the ownership of the licensee's voting stock, the ownership of voting stock of any person that possesses such power over the licensee, or otherwise; and*

2. *Shall be presumed to exist for any person that, directly or indirectly, owns, controls, or holds with power to vote, ten percent (10%) or more of the following, except no person shall be deemed to control a licensee solely by reason of being an officer or director of the licensee:*

a. *A licensee's voting stock; or*

b. *The voting stock of a person that owns, controls, or holds with power to vote, ten percent (10%) or more of a licensee's voting stock; and*

(b) *"Legal representative" means a person duly appointed by a court of competent jurisdiction to act as executor, administrator, trustee, committee, conservator, or receiver, including a person acting in an ancillary capacity thereto in accordance with the provisions of the court appointment.*

(2) *A licensee shall submit to the commissioner, within fifteen (15) days after learning of a proposed change of control, and at least thirty (30) days prior to the proposed change of control:*

(a) *The name, address, and occupation of each new managing officer and director, general partner, or managing member, as may be applicable; and*

(b) *Any other information as the commissioner may require.*

(3) (a) *The commissioner may determine whether or not the ownership, control, or holding of voting stock constitutes, or would constitute, control of a licensee for purposes of this section.*

(b) *The following may make a request to the commissioner for a determination under paragraph (a) of this subsection:*

1. *A licensee;*

2. *Any person that, directly or indirectly, owns, controls, or holds the power to vote, any voting stock of a licensee; or*

3. *Any person that seeks to own, control, or hold power to vote, any voting stock of a licensee.*

(4) (a) *Except as provided in subsection (6) of this section, no person shall take an action that results in a change in control of a licensee without prior written approval from the commissioner.*

(b) *A person seeking to acquire control of a licensee shall:*

1. *Submit a written application to, and on a form prescribed by, the commissioner, which shall include:*

a. *The information and materials required for applications under Section 4 of this Act; and*

b. *Any other information the commissioner deems necessary and appropriate for the purpose of making the determination required by subsection (5) of this section; and*

2. *Pay an investigation fee prescribed by order of the commissioner.*

(5) *The commissioner shall approve an application made under subsection (4) of this section if the commissioner determines that the requirements of this subtitle for obtaining a license will be satisfied after the change of control.*

(6) *For a change of control by operation of law to the legal representative of a person who has control of a licensee, the legal representative shall, within six (6) months from the date of the representative's*

*qualification or within any additional period of time as the commissioner may, in writing, approve, make an application to the commissioner under subsection (4) of this section for approval of the change of control, which shall be determined by the commissioner in accordance with subsection (5) of this section.*

➔SECTION 6. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

*Each student education loan servicer shall:*

- (1) *Keep all records for a minimum of three (3) years after satisfaction of a loan; and*
- (2) *Use in its business such books, accounts, correspondence with borrowers, and records as will enable the commissioner to determine whether the servicer is complying with the provisions of this subtitle and administrative regulations or orders promulgated pursuant to this subtitle.*

➔SECTION 7. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *Each licensee shall annually file a report with the commissioner, providing information as the commissioner may require concerning the licensee's business operations during the preceding calendar year.*
- (2) *The commissioner may require additional regular or special reports from a student education loan servicer as the commissioner may deem necessary for the proper supervision of regulated persons under this subtitle.*
- (3) *Any report submitted under subsection (1) or (2) of this section shall be:*
  - (a) *In a form prescribed by the commissioner; and*
  - (b) *Subscribed to and affirmed as true by the licensee or servicer under the penalties of perjury.*

➔SECTION 8. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "wholly owned subsidiary" means a subsidiary that is entirely owned or controlled by another person.*
- (2)
  - (a) *A licensee shall pay an annual assessment fee no later than December 1 of each year.*
  - (b) *The assessment fee required under this section shall:*
    1. *Be prescribed by the commissioner by order, which shall be reasonably adjusted by order five (5) years from the effective date of this Act and every five (5) years thereafter;*
    2. *Be based on the volume of loans serviced in Kentucky, or for Kentucky residents, between October 1st through September 30th of the preceding year; and*
    3. *Cover the renewal fee for the licensee and any examination-related costs incurred by the department.*
  - (c) *An adjustment made pursuant to paragraph (b)1. of this subsection may be based on the nonseasonally adjusted Consumer Price Index for all Urban Consumers (CPI-U), U.S. City Average, All Items, as published by the United States Bureau of Labor Statistics.*
  - (d) *The commissioner shall set a minimum and maximum assessment fee to account for low and high volume licensees.*
- (3) *A licensee shall annually file a written renewal report, in a form prescribed by the commissioner, which shall include:*
  - (a) *A copy of the licensee's most recent audited annual financial statement or, if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation;*
  - (b) *For the most recent quarter for which data is available prior to the date of filing of the renewal report, but in no event more than one hundred twenty (120) days prior to the renewal report filing date:*
    1. *A list of the number of student education loans serviced by the licensee in this state;*

2. *The dollar amount of the loans referenced in subparagraph 1. of this paragraph; and*
3. *The dollar amount of the loans referenced in subparagraph 1. of this paragraph that are currently outstanding;*
- (c) *Any material changes to any of the information submitted by the licensee on its original application which have not previously been reported to the commissioner on any other report required under this subtitle;*
- (d) *A list of the licensee's permissible investments in accordance with this subtitle, any administrative regulation promulgated pursuant to this subtitle, or any order of the commissioner issued pursuant to this subtitle;*
- (e) *A certification that the licensee continues to maintain permissible investments in accordance with this subtitle, any administrative regulation promulgated pursuant to this subtitle, or any order of the commissioner issued pursuant to this subtitle; and*
- (f) *A list of locations, including names, physical addresses, and telephone numbers, in this state where the licensee is conducting student education loan servicing, if any.*
- (4) (a) *The failure of a licensee to pay the annual assessment fee required under subsection (2) of this section or to file the written renewal report required under subsection (3) of this section by December 1 shall result in the expiration of the licensee's license by operation of law on December 31 of the same year.*
- (b) *The commissioner may reinstate a license that has expired pursuant to paragraph (a) of this subsection if, within thirty (30) days of the expiration of the license, the licensee:*
  1. *Becomes compliant with this section; and*
  2. *Pays a civil penalty equal to one thousand dollars (\$1,000).*

➔SECTION 9. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "consumer reporting agency" means a consumer reporting agency that compiles and maintains files on a nationwide basis as defined in the Fair Credit Reporting Act, 15 U.S.C. sec. 1681a(p).*
- (2) *A student education loan servicer shall not engage in abusive acts or practices, including but not limited to acts or practices that:*
  - (a) *Materially interfere with the ability of a borrower to clarify a term or condition of a student education loan; or*
  - (b) *Fail to educate and inform the borrower of any of the following:*
    1. *The material risks, costs, or conditions of a student education loan;*
    2. *Selecting or using a student education loan or a feature, term, or condition of a student education loan; or*
    3. *Accurate and relevant information related to loan payments of the loans serviced by the servicer.*
- (3) *A student education loan servicer shall not:*
  - (a) *Employ any scheme, device, or artifice to defraud or mislead a borrower;*
  - (b) *Engage in any unfair, deceptive, or predatory practice toward any borrower or misrepresent or omit any material information in connection with servicing a student education loan, including but not limited to:*
    1. *Misrepresenting the:*
      - a. *Amount, nature, or terms of any fee or payment due or claimed to be due on a student education loan;*

- b. *Terms and conditions of the student education loan agreement or any modification to the agreement; or*
- c. *Borrower's obligations under the student education loan; and*
- 2. *With respect to a military borrower, older borrower, borrower working in public service, or a borrower with a disability, misrepresenting or omitting the availability of a program or protection specific to the respective borrower or applicable to the respective category of borrowers;*
- (c) *Misapply payments made by a borrower to the outstanding loan balance;*
- (d) *Refuse to communicate with an authorized representative of the borrower, except the servicer may adopt reasonable procedures for:*
  - 1. *Requesting verifying documentation that the representative is in fact authorized to act on behalf of the borrower; and*
  - 2. *Protecting the borrower from fraud or abusive practices;*
- (e) *Make any false statement or omit a material fact in connection with any information or report filed with a governmental agency or in connection with any investigation conducted by the commissioner or any other governmental agency;*
- (f) *If the student education loan servicer is required to report, or voluntarily reports, to a consumer reporting agency, fail to accurately report each borrower's payment performance to a least one (1) consumer reporting agency upon acceptance as a data furnisher by that consumer reporting agency; or*
- (g) *Fail to respond to:*
  - 1. *Written correspondence from, or on behalf of, a borrower within a reasonable time as prescribed by the commissioner in administrative regulation;*
  - 2. *A communication from the commissioner or the commissioner's examiner or designated representative, as applicable, within ten (10) business days or within a shorter, reasonable time as the commissioner or the commissioner's examiner or designated representative may provide in the communication; or*
  - 3. *A borrower complaint submitted to the servicer by the commissioner or the commissioner's examiner or designated representative, as applicable, within ten (10) business days of receipt of the complaint, or upon request from the servicer explaining why the additional time is reasonable and necessary, a longer time as the commissioner or the commissioner's examiner or designated representative may permit, not to exceed forty-five (45) days.*

➔SECTION 10. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

*In addition to the requirements of this subtitle, student education loan servicers shall comply with all applicable federal and state laws.*

➔SECTION 11. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "registry" means the State Regulatory Registry, LLC, or its successor organization.*
- (2) *When an application, report, or approval request is required to be filed with the commissioner under this subtitle, the commissioner may require, by administrative regulation or order, that the filing, including any applicable fees and supporting documentation, be submitted to:*
  - (a) *The registry or its successor organization;*
  - (b) *The registry's parent, affiliate, or operating subsidiary; or*
  - (c) *Other agencies or authorities as part of a nationwide licensing system, which may act as an agent for receiving, requesting, and distributing information to and from any source directed by the commissioner.*
- (3) *The commissioner:*



- (a) *May report violations of this subtitle, enforcement actions, and other relevant information that the commissioner deems necessary to carry out the purpose of this section to the registry or its affiliated entities; and*
  - (b) *Shall establish a process whereby licensees may challenge information entered into the registry by the commissioner.*
- (4) *The commissioner shall annually request:*
- (a) *Audited financial reports, including inquiring as to the budget and fees collected, both proposed and actual, from the registry; and*
  - (b) *Any nonconfidential protocols or reports for the security and safeguarding of personal information maintained by the registry, including inquiring as to:*
    - 1. *Whether the system has implemented and complied with the data security guidelines set forth in the Gramm-Leach-Bliley Act, 15 U.S.C. sec. 6801;*
    - 2. *The results of any nonconfidential periodic data protection audits that the system may conduct; and*
    - 3. *Whether any security breaches have occurred resulting in the substantial likelihood that personal information may be misused or stolen.*
- (5) *The commissioner may establish relationships and contracts with other governmental agencies or entities affiliated with the registry that the commissioner deems necessary to carry out this section.*
- (6) *For purposes of this section, the commissioner may use other governmental agencies or the registry or its affiliated entities as an agent for requesting information from, and distributing information to, the United States Department of Justice or other governmental agencies.*

➔SECTION 12. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *For purposes of enforcing this subtitle, the commissioner may:*
- (a) *Conduct routine examinations of the books, accounts, records, and files of:*
    - 1. *Any licensee and its affiliates; and*
    - 2. *Any other person, to the extent the commissioner is authorized by any other law to make an examination into the affairs of that person;*
  - (b) *Conduct investigations of student education loan servicers or additional persons within or outside of the state as the commissioner deems necessary to discover violations of this subtitle or to secure information necessary for its proper enforcement;*
  - (c) *Control access to any documents and records of the licensee or other person under examination or investigation; and*
  - (d)
    - 1. *Take possession of the documents and records referenced under paragraph (c) of this subsection or place a person in exclusive charge of those documents and records in the place where they are usually kept.*
    - 2. *During the period of control under this paragraph, no person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner.*
    - 3. *Unless the commissioner has reasonable grounds to believe that documents or records of the licensee have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of this subtitle, the licensee or owner of the documents or records shall have access to the documents or records as necessary to conduct its ordinary business affairs.*
- (2) *For purposes of conducting examinations and investigations under this section, the commissioner and the commissioner's examiner or designated representative:*
- (a) *May:*
    - 1. *Compel the attendance of any person or obtain any documents by subpoenas;*

2. *Administer oaths and affirmations; and*
  3. *Examine under oath or affirmation all persons whose testimony he or she may require relative to the loans or business of the persons regulated under this subtitle; and*
- (b) *Shall have free access to the accounts, papers, records, correspondences, files, safes, vaults, offices, and places of business relating to or used in connection with any business regulated under this subtitle, including records kept by any current or former officer, agent, contractor, or employee.*
- (3) *A student education loan servicer shall:*
- (a) *Not impede the commissioner, or the commissioner's examiner or designated representative, from interviewing the servicer's officers, principals, members, employees, independent contractors, agents, or customers; and*
  - (b) *Make available and grant access to the commissioner, or the commissioner's examiner or designated representative, the records and other property referenced under subsection (2)(b) of this section.*
- (4) *No person subject to investigation or examination under this subtitle shall knowingly withhold, abstract, alter, remove, mutilate, destroy, or secrete any books, records, or other information.*
- (5) (a) *Subject to paragraphs (b) and (c) of this subsection, an examination report, correspondence that relates to an examination report, and information obtained during an examination or investigation shall be confidential.*
- (b) *No officer or director of a student education loan servicer, employee of the department, or employee of a state or federal regulatory authority shall release any information contained in an examination conducted under this section unless:*
1. *Required in a proper legal proceeding in which a subpoena and protective order ensuring confidentiality has been issued by a court of competent jurisdiction; or*
  2. *The information is referred to an appropriate prosecuting attorney for possible criminal proceedings.*
- (c) *The department may furnish information to, and exchange information and reports with, officials and examiners of other properly authorized state and federal regulatory authorities and law enforcement agencies.*
- (6) *Every official report concerning a student education loan servicer and every report of examination shall be prima facie evidence of the facts therein stated for all purposes in any action in which the department and the student education loan servicer are parties.*
- (7) *If any person fails to comply with a subpoena issued by the commissioner under this section, the commissioner may petition the Franklin Circuit Court or any court of competent jurisdiction for enforcement of the subpoena.*
- (8) *In order to carry out the purposes of this subtitle, the commissioner may:*
- (a) *Retain examiners, auditors, investigators, accountants, or other professionals and specialists to conduct, or assist in the conduct of, any examination, investigation, or enforcement action; and*
  - (b) *Use, hire, contract, or employ public or private analytical systems, methods, or software.*
- (9) *The authority of this section shall remain in effect whether a person acts, or claims to act, under any licensing law of this subtitle, or acts, or claims to act, without such authority.*
- (10) *If a report from, or an examination of, a licensee provides evidence of unlawful activity between a licensee and affiliate benefitting, affecting, or arising from the activities regulated by this subtitle, the affiliate shall be subject to examination by the commissioner on the same terms as the licensee.*

➔SECTION 13. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to subsection (2) of this section, the commissioner may issue a written order to condition, deny, suspend, or revoke a license issued under this subtitle if the commissioner finds that one (1) or more of the following has occurred:*
- (a) *The licensee:*

1. *No longer meets the requirements to hold a license under this subtitle;*
  2. *Materially violated any provision of this subtitle, any administrative regulation or order issued pursuant to this subtitle, or any other state law or regulation related to the business of student education loan servicing;*
  3. *Is conducting its business in an unsafe or unsound manner;*
  4. *Engaged in an unfair or deceptive act or practice;*
  5. *Is insolvent;*
  6. *Has suspended payment of its obligations or has made an assignment for the benefit of its creditors;*
  7. *Has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under the United States Bankruptcy Code, 11 U.S.C. secs. 101-110;*
  8. *Has failed to cooperate in an examination, investigation, or subpoena issued by the commissioner;*
  9. *Has failed to make any report required by this subtitle; or*
  10. *Has been convicted of:*
    - a. *To the extent permitted under KRS 335B.020, a felony; or*
    - b. *A misdemeanor:*
      - i. *Related to the business of student education loan servicing; or*
      - ii. *Involving theft, fraud, or breach of trust;*
- (b) *Any fact or condition exists that would have been grounds for denying the application if it had existed at the time the licensee applied for its license; or*
- (c) *The licensee's net worth, as determined in accordance with generally accepted accounting principles, falls below the required net worth as prescribed in subsection (2)(b) of Section 4 of this Act, and the licensee, after ten (10) days written notice from the commissioner, fails to take any action the commissioner deems necessary to remedy the deficiency.*
- (2) (a) *The commissioner shall provide written notice to the licensee prior to denying, suspending, or revoking a license under subsection (1) of this section.*
- (b) *A licensee that receives a notice of the commissioner's intent to deny, revoke, or suspend a license may file a written application for an administrative hearing in accordance with KRS Chapter 13B within twenty (20) days of the date of the notice.*
- (c) *If a licensee fails to timely request a hearing pursuant to paragraph (b) of this subsection, the commissioner may enter a default order of denial, revocation, or suspension against the licensee.*
- (3) (a) *Any person who has had a license revoked by the commissioner under this section shall not be eligible for a license under Section 4 of this Act until three (3) years after the date of revocation.*
- (b) *Any person who has a license revoked twice by the commissioner under this section shall be permanently ineligible for a license under this subtitle.*
- (4) *In determining whether a licensee is engaging in an unsafe or unsound practice under subsection (1)(a)3. of this section, the commissioner may consider:*
- (a) *The size and condition of the licensee;*
  - (b) *The magnitude of the loss;*
  - (c) *The gravity of the violation of this subtitle or an administrative regulation or order issued pursuant to this subtitle;*
  - (d) *Any action taken against the licensee by another state or federal government; and*
  - (e) *The previous conduct of the licensee.*

➔SECTION 14. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *The commissioner may enter:*
- (a) *An emergency order suspending, conditioning, limiting, or restricting a license issued under this subtitle without notice or hearing if, after an investigation and written findings, it appears upon grounds satisfactory to the commissioner that the licensee has engaged, or is about to engage, in unsafe, unsound, or illegal practices that pose an imminent threat or harm to the public interest; and*
  - (b) *An emergency cease-and-desist order against an unlicensed person if, after an investigation and written findings, it appears upon grounds satisfactory to the commissioner that the unlicensed person has engaged, or is about to engage, in unsafe or unsound practices, or actions contrary to this subtitle, that pose an imminent threat or harm to the public interest.*
- (2) *There shall be sufficient grounds for an emergency order under subsection (1)(a) of this section if it appears on grounds satisfactory to the commissioner that:*
- (a) *The licensee has willfully failed to comply with one (1) or more of the requirements of this subtitle;*
  - (b) *The licensee is in such financial condition that it cannot continue its current business operations with safety to its customers;*
  - (c) *The licensee or a person in control of the licensee:*
    - 1. *Has been found guilty of any act involving fraud, deception, theft, or breach of trust; or*
    - 2. *Is the subject of:*
      - a. *An active administrative cease-and-desist order or similar order;*
      - b. *A civil judgment of a financial nature involving fraud, deception, or misrepresentation; or*
      - c. *A permanent or temporary injunction currently in effect entered by any court or agency of competent jurisdiction;*
  - (d) *The licensee has made a willful misrepresentation of material fact to, or concealed an essential or material fact from, a person in the course of doing business or has engaged in a course of business that has worked or tended to work a fraud or deceit upon any person or would so operate;*
  - (e) *The licensee has refused to permit a lawful examination or investigation, or has refused or failed, within a reasonable time, to furnish any information or make any report that may have been requested or required by the commissioner in connection with a lawful investigation or examination; or*
  - (f) *The licensee has had any license, registration, or claim of exemption related to the financial services industry denied, suspended, or revoked under the laws of this state or has surrendered or terminated any license, registration, or claim of exemption issued by this state under threat of administrative action.*
- (3) *An emergency order issued under this section shall:*
- (a)
    - 1. *Be served by personal service or certified mail to the last known address of record.*
    - 2. *For purposes of this paragraph, service by certified mail shall be complete upon the earlier of:*
      - a. *The date on which the person receives the mail;*
      - b. *The date on which the agency receives the return receipt; or*
      - c. *The date on which the agency receives notice that the mail has been returned undelivered;*
  - (b) *Pursuant to KRS 13B.125, become effective when served by the commissioner; and*
  - (c) *Remain in effect until it is:*
    - 1. *Stayed, withdrawn, or suspended by an order of the commissioner; or*
    - 2. *Terminated by a court order.*

- (4) (a) *A person aggrieved by an emergency order issued by the commissioner under this section may request an emergency hearing, in writing, within twenty (20) days of service of the emergency order.*
- (b) *Upon receipt of a timely written request for an emergency hearing, an emergency hearing shall be conducted in accordance with KRS 13B.125.*

➔SECTION 15. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *The commissioner may file an administrative complaint against any person if it appears on grounds satisfactory to the commissioner that a potential or actual violation of this subtitle has been committed.*
- (b) *The commissioner shall serve the administrative complaint, by certified mail or personal delivery, to the person's last known address of record or upon the person's agent for service of process.*
- (c) *The parties named in the administrative complaint shall be entitled to a hearing on the complaint, which shall be requested, in writing, within twenty (20) days of service of the complaint.*
- (d) 1. *If a timely request for a hearing is made, an administrative hearing shall be held in accordance with KRS Chapter 13B.*
2. *If a timely request for a hearing is not made, the commissioner may enter a final order in the matter.*
- (2) *For purposes of this section, service by certified mail shall be complete upon the earlier of:*
- (a) *The date on which the person receives the mail;*
- (b) *The date on which the agency receives the return receipt; or*
- (c) *The date on which the agency receives notice that the mail has been returned undelivered.*

➔SECTION 16. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *Any person aggrieved by a final order of the commissioner under this subtitle may obtain a review of the order in Franklin Circuit Court by filing with that court, within thirty (30) days after entry of the order, a written petition requesting that the order be modified or set aside in whole or in part.*
- (2) *A copy of the petition under subsection (1) of this section shall be served upon the commissioner, and thereupon the commissioner shall certify and file with the court a copy of the filing, testimony, and other evidence upon which the order was entered.*
- (3) *Upon the filings under subsections (1) and (2) of this section, the Franklin Circuit Court shall have exclusive jurisdiction to affirm, modify, enforce, or set aside the order at issue.*
- (4) *No objection to the order may be considered by the court unless it was urged before the commissioner or there were reasonable grounds for the failure to do so.*
- (5) (a) *If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the commissioner, the court may order the additional evidence be taken before the commissioner and be adduced upon the hearing in a manner and upon conditions as the court may consider proper.*
- (b) *The commissioner:*
1. *May modify his or her findings as to the facts by reason of the additional evidence so taken; and*
2. *Shall file:*
- a. *Any modified or new findings, which, if supported by substantial evidence, shall be conclusive; and*
- b. *Any recommendation for the modification or setting aside of the original order.*

- (6) *The commencement of proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the commissioner's order.*
- (7) *An appeal may be taken from the judgment of the Franklin Circuit Court to the Court of Appeals on the same terms and conditions as an appeal is taken in civil actions.*

➔SECTION 17. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *In addition to any other remedies, penalties, or damages available under common law or statute, the commissioner may impose a civil penalty based on the following:*
1. *Repeat violations of this subtitle, any administrative regulation promulgated under this subtitle, or any order issued by the commissioner under this subtitle; or*
  2. *A pattern or practice of a licensee that results in a violation of this subtitle, any administrative regulation promulgated under this subtitle, or any order issued by the commissioner under this subtitle.*
- (b) *A civil penalty imposed under this subsection shall be not less than one thousand dollars (\$1,000) and not more than twenty-five thousand dollars (\$25,000) per violation per day for each day that the violation is outstanding.*
- (2) *In addition to any civil penalty imposed under subsection (1) of this section, the commissioner may:*
- (a) *Assess costs and expenses for the examination, investigation, and prosecution of the matter, including reasonable attorney fees and costs; and*
  - (b) *When a violation applicable to borrowers with a disability, military borrowers, older borrowers, or borrowers working in public service results in financial harm, impose a civil penalty not to exceed twenty thousand dollars (\$20,000) per violation per day for each day the violation is outstanding.*
- (3) *The commissioner may order restitution, refund, recovery of expenses, or direct other affirmative action as the commissioner deems necessary against any person who violates any order issued by the commissioner or any provision of, or administrative regulation promulgated under, this subtitle.*

➔SECTION 18. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *The provisions of this subtitle shall be subject to all applicable federal laws and regulations.*
- (2) *To the extent any provision of this subtitle conflicts with an applicable federal law or regulation, the applicable federal law or regulation shall control.*

➔SECTION 19. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

*Nothing in this subtitle shall be construed to prevent a civil right of action on behalf of an aggrieved party.*

➔Section 20. KRS 452.005 is amended to read as follows:

- (1) Except as provided in KRS 5.005 *and Section 16 of this Act*, and notwithstanding any other statute to the contrary, the venue for any civil action that:
- (a) Challenges the constitutionality of a Kentucky:
    1. Statute;
    2. Executive order;
    3. Administrative regulation; or
    4. Order of any cabinet, program cabinet, or department established under KRS Chapter 12;
  - (b) Includes a claim for declaratory judgment or injunctive relief; and
  - (c) Is brought individually, jointly, or severally against:
    1. Any state official in his or her official capacity, including any public servant as defined in KRS 11A.010; or

2. Any body, subdivision, caucus, committee, or member of the General Assembly, or the Legislative Research Commission;

shall be as provided in this section.

- (2) (a) A plaintiff who is a resident of Kentucky shall file a complaint or petition in the office of the Circuit Court clerk in the county where the plaintiff resides. If more than one (1) plaintiff is a party to the action, the complaint or petition may be filed in any county where any plaintiff resides.
- (b) A plaintiff who is not a resident of Kentucky shall file a complaint or petition in the Franklin Circuit Court.
- (3) The plaintiff shall certify in the complaint or petition filed under this section that a copy of the complaint or petition has been served upon the Attorney General before or at the time of filing, and the Attorney General shall be entitled to be heard.
- (4) In any appeal to the Kentucky Court of Appeals or Supreme Court, or the federal appellate courts in any forum that involves the constitutional validity of a statute, executive order, administrative regulation, or order of any cabinet, program cabinet, or department established under KRS Chapter 12, the Attorney General shall, before the filing of the appellant's brief, be served with a copy of the pleading, paper, or other document that initiates the appeal in the appellate forum. This notice shall specify the challenged statute, executive order, administrative regulation, or order of a cabinet, program cabinet, or department established under KRS Chapter 12, and the nature of the alleged constitutional defect.
- (5) The Attorney General shall notify the Legislative Research Commission of:
- (a) The receipt of a complaint or petition and the nature of any proceedings involving the validity of any statute or regulation, or order of a cabinet, program cabinet, or department established under KRS Chapter 12; and
- (b) The entering of a final judgment in those proceedings, if the Attorney General is a party to the action.
- (6) To protect the rights of the citizens of the Commonwealth of Kentucky as guaranteed by the Constitution of Kentucky, it is the intent of the General Assembly that any action brought or pursued under this section be given priority and prosecuted in an expeditious manner.
- (7) Pursuant to Sections 43 and 231 of the Constitution of Kentucky, members of the General Assembly, organizations within the legislative branch of state government, or officers or employees of the legislative branch shall not be made parties to any action challenging the constitutionality or validity of any statute or regulation, without the consent of the member, organization, or officer or employee.
- (8) Nothing in this section is intended to waive, nor shall it be interpreted or applied to waive or abrogate in any way, any legislative immunity or legislative privilege of any body, subdivision, caucus, committee, or member of the General Assembly, or the Legislative Research Commission, as provided by the Constitution of Kentucky, KRS 418.075, any other statute of this Commonwealth, or federal or state common law.

➔Section 21. If any provision of this Act, or the application of any provisions of this Act to any person or circumstance, is held invalid, the invalidity shall not affect other provisions or applications of the Act, which shall be given effect without the invalid provision or application, and to this end the provisions and application of this Act are severable.

➔Section 22. This Act may be cited as the Student Education Loan Servicing, Licensing, and Protection Act of 2022.

**Signed by Governor April 7, 2022.**