

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM  
2022 REGULAR SESSION  
**Unofficial Document**

Amend printed copy of **HB 494**

Starting on page 1, line 3, to page 31, line 26, delete in its entirety and insert the following in lieu thereof:

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

*As used in this subtitle:*

*(1) "Borrower" means:*

*(a) A person who has received, or agreed to pay, a student loan; or*

*(b) A person who shares responsibility for repaying a student loan with a person described in paragraph (a) of this subsection;*

*(2) "Borrower with a disability" means a borrower who the servicer knows, or reasonably should know, is a person who has a disability;*

*(3) "Borrower working in public service" means a borrower who the servicer knows, or reasonably should know, 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;*

*(4) "Federal student loan" means any:*

*(a) Student loan issued pursuant to the William D. Ford Federal Direct Loan Program established under 20 U.S.C. secs. 1087a et seq., as amended;*

Amendment No. HFA 1

Rep. Rep. Patti Minter

Committee Amendment \_\_\_\_\_

Signed: \_\_\_\_\_

Floor Amendment \_\_\_\_\_

LRC Drafter: \_\_\_\_\_

Adopted: \_\_\_\_\_

Date: \_\_\_\_\_

Rejected: \_\_\_\_\_

Doc. ID: XXXX

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- (b) Student 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 loan issued pursuant to a federal program that is identified by the commissioner, in administrative regulation, as a federal student loan;
- (5) "In this state" means any activity of a person relating to servicing student 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;
- (6) "Licensee" means a person licensed as a student loan servicer under this subtitle;
- (7) "Military borrower" means a borrower who is, or self-identifies when interacting with a student loan servicer as:
- (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;
- (8) "Older borrower" means a borrower who a servicer knows, or reasonably should know, is sixty (60) years of age or older;
- (9) "Qualified written request" means written correspondence, other than notice on a payment medium supplied by a student loan servicer, made by a borrower that is transmitted by mail, facsimile, or electronically through an e-mail address or Web site designated by the servicer to receive communications from borrowers that does all of the following:

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(a) Enables the servicer to identify the name and account of the borrower; and

(b) Includes a statement:

1. Of the reasons for the borrower's belief, to the extent applicable, that the borrower's account is in error; or

2. That provides sufficient detail to the servicer regarding the information sought by the borrower, which may include requesting:

a. A complete payment history for the borrower's loan or the borrower's account;

b. A copy of the borrower's student loan promissory note; or

c. The contact information for the creditor to whom the borrower's student loan is owed;

(10) "Servicing" means any of the following activities related to a student loan:

(a) Performing both of the following:

1. Receiving any:

a. Scheduled periodic 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 loan or the contract governing the servicing of the loan;

(b) During a period when no payment is required on a student loan, performing both of the following:

1. Maintaining account records for the student loan; and

2. Communicating with the borrower regarding the student loan on behalf of the owner of the student loan promissory note;

(c) Interacting with a borrower regarding the borrower's student loan with the goal of helping the borrower avoid default on the student loan; or

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- (d) Facilitating the activities described in paragraph (a) or (b) of this subsection;
- (11) "Substantial stockholder" means a person owning or controlling, directly or indirectly, ten percent (10%) or more of the total outstanding stock of a corporation;
- (12) "Student loan" means any loan to a borrower to finance postsecondary education or expenses related to postsecondary education;
- (13) "Student loan ombudsman" means the person appointed under Section 19 of this Act;  
and
- (14) "Student loan servicer" or "servicer":
- (a) Means a person engaged in the business of servicing student loans in this state;  
and
- (b) Includes both licensees and persons that are exempt from licensure under this subtitle.

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

The provisions of this subtitle shall be subject to all applicable federal laws and regulations. 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 3. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) Except as provided in subsections (2) and (3) of this section, no person shall engage in the business of servicing student loans in this state without having first obtained a license as a student loan servicer in accordance with this subtitle.
- (2) (a) The following may make an application to the commissioner for a claim of exemption under paragraph (b) of this subsection:
1. A bank, trust company, or industrial loan company doing business under the

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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;

2. A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in this state;

3. 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; and

4. A public postsecondary education institution or private nonprofit postsecondary education institution servicing a student loan extended to a borrower.

(b) A person described in paragraph (a) of this subsection shall be exempt from the licensure requirements of this section if the person files an application for a claim of exemption with the commissioner on a form prescribed by the commissioner. The commissioner shall approve an application for a claim of exemption under this subsection if the application provides notification to the commissioner that the applicant:

1. Is servicing, or will service, student loans in this state; and

2. Shall comply with Sections 9, 11, 12, 13, 14, 15, 16, and 19 of this Act and any administrative regulation promulgated pursuant to those statutes.

(3) (a) A person that services federal student loans in this state shall:

1. As of the effective date of this Act, automatically be deemed, by operation of law, as having been authorized by the commissioner to service federal student loans in this state;

2. Notify the commissioner that the person is servicing federal student loans in

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this state; and

3. Comply with Sections 9, 11, 12, 13, 14, 15, 16, and 19 of this Act and any administrative regulation promulgated pursuant to those statutes.

(b) A person that services federal student loans in this state shall not be authorized to engage in the business of servicing non-federal student loans in this state unless the person:

1. Has received an exemption under subsection (2) of this section; or

2. Is licensed as a student 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) A person applying for a license as a student loan servicer under this subtitle shall submit to the commissioner:

(a) A completed application, in a form prescribed by the commissioner, which shall include:

1. A description of the activities of the applicant, in such detail and for such periods as the commissioner may require;

2. An affirmation of financial solvency, noting any capitalization and access to credit as the commissioner may require;

3. A financial statement prepared by a certified public accountant, the accuracy of which is sworn under oath before a notary public by an officer or other representative of the applicant who is authorized to execute such documents;

4. An affirmation that the applicant, or its members, officers, partners, directors, and principals, as may be appropriate, are at least twenty-one (21) years of age;

5. Information as to the character, fitness, financial and business responsibility,

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- background, and experience of the applicant, or its members, officers, partners, directors, and principals, as may be appropriate; and
6. Any additional detail or information required by the commissioner; and
- (b) An application and investigation fee prescribed by the commissioner.
- (2) The commissioner may deny an application for a license as a student loan servicer if:
- (a) A false statement of material fact has been made on the application;
- (b) A material requirement for issuance has not been met;
- (c) The applicant, or any principal officer, director, general partner, managing member, or substantial stockholder of the applicant:
1. Within the last ten (10) years:
- a. To the extent permitted under KRS 335B.020, has been convicted of, or pleaded nolo contendere to, a felony; 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, any provision of this subtitle, an administrative regulation issued pursuant to this subtitle, an order of the commissioner, or any similar regulatory scheme of this or a foreign jurisdiction;
3. Has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, within the past seven (7) years;
4. Has had, or has been an officer, director, partner, member, or substantial stockholder of an entity which has had, a license or registration revoked by the commissioner or any other regulator or jurisdiction; or

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- 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**
- (d) The commissioner is unable to find that the financial responsibility, experience, character, and general fitness of the applicant and its general partners, managing members, principal officers and directors, and substantial stockholders command the confidence of the community and warrant the belief that the business will be operated honestly, fairly, and efficiently within the purposes of this subtitle.**
- (3) A license issued under this subtitle:**
- (a) Shall not be transferable or assignable; and**
- (b) Shall remain in full force and effect until it is surrendered, revoked, or suspended.**
- ➔SECTION 5. 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 under this subtitle to be filed with the commissioner, the commissioner may require, by administrative regulation or order, that the filing, including any applicable fees and any supporting documentation, be submitted to:**
- (a) The State Regulatory Registry, LLC, 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) Notwithstanding any provision of this subtitle to the contrary, the commissioner may**



report violations of this subtitle, enforcement actions, and other relevant information to the registry.

(4) The commissioner may use the registry as an agent for requesting information from and distributing information to the United States Department of Justice or other governmental agencies.

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

Upon any change of any of the executive officers, directors, partners, or members of a licensee, the licensee shall submit to the commissioner the name, address, and occupation of each new officer, director, partner, or member, and provide such other information as the commissioner may require.

→SECTION 7. 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 voting stock of the licensee, 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 a 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. The voting stock of a licensee; or

b. The voting stock of a person that owns, controls, or holds with power to

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vote, ten percent (10%) or more of the voting stock of a licensee; 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 who succeeds a legal representative and a person acting in an ancillary capacity thereto in accordance with the provisions of the court appointment.

(2) (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 with power to vote, any voting stock of a licensee; or

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

(3) (a) Except as provided in subsection (5) of this section, no person shall take an action that results in a change of 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 the commissioner on a form prescribed by the commissioner, which shall include:

a. The information and material required for applications submitted under Section 4 of this Act; and

b. Any other information that the commissioner deems necessary and

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appropriate for the purpose of making the determination required by subsection (4) of this section; and

2. Pay an investigation fee prescribed by the commissioner.

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

(5) 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 for any additional period of time as the commissioner may, in writing, approve, make an application to the commissioner under subsection (3) of this section for approval of the change of control, which shall be determined by the commissioner in accordance with subsection (4) of this section.

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

(1) After notice and hearing, the commissioner may revoke or suspend any license issued under this subtitle if the commissioner finds that:

(a) The licensee has violated any provision of this subtitle, any administrative regulation or order of the commissioner issued under this subtitle, or any other applicable law;

(b) Any fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the commissioner refusing to issue the license;

(c) The licensee has failed to cooperate with an examination or investigation by the commissioner;

(d) The licensee has engaged in fraud, intentional misrepresentation, or gross

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negligence in servicing a student loan;

(e) The competence, experience, character, or general fitness of the licensee, a substantial stockholder of the licensee, or any person responsible for servicing a student loan for the licensee indicates that it is not in the public interest to permit the licensee to continue servicing student loans;

(f) The licensee has engaged in an unsafe or unsound practice, or a deceptive practice;

(g) The licensee is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors; or

(h) The licensee has violated the laws of this state, any other state, or any federal law involving fraudulent or dishonest dealing, or a final judgment has been entered against the licensee in a civil action upon grounds of fraud, misrepresentation, or deceit.

(2) (a) As used in this subsection, "good cause" shall exist when a licensee:

1. Has defaulted, or is likely to default, in performing its financial engagements;

or

2. Engages in dishonest or inequitable practices which may cause substantial harm to the persons afforded the protection of this subtitle.

(b) Notwithstanding subsection (3) of this section, the commissioner may, on good cause shown, or where there is a substantial risk of public harm, suspend any license, for a period not exceeding thirty (30) days, pending investigation.

(3) (a) Except as provided in subsection (2) of this section, no license shall be revoked or suspended except after notice and hearing.

(b) Any order of suspension issued after notice and a hearing may include as a condition of reinstatement that the student loan servicer make restitution to

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borrowers of fees or other charges which have been improperly charged or collected, including but not limited to allocating payments:

1. Contrary to a borrower's direction; or

2. In a manner that fails to help a borrower avoid default, as determined by the commissioner.

(c) Any hearing held pursuant to this section shall be conducted in accordance with KRS Chapter 13B.

(4) (a) Any licensee may surrender a license issued under this subtitle by delivering written notice to the commissioner.

(b) The surrender of a license under this subsection shall not affect the student loan servicer's civil or criminal liability for acts committed prior to surrender.

(c) If a license is surrendered after the issuance of a statement of charges and notice of hearing by the commissioner, the commissioner may proceed against the student loan servicer as if the surrender had not taken place.

(5) No revocation, suspension, or surrender of a license issued under this subtitle shall impair or affect the obligation of any pre-existing lawful contract between the student loan servicer and any person, including the department.

(6) If the commissioner revokes or suspends a license issued under this subtitle, the commissioner shall execute, in duplicate, a written order to that effect. The commissioner shall file one (1) copy of the order in the office of the department and shall serve the other copy upon the student loan servicer.

(7) Notwithstanding Section 21 of this Act, any order issued by the commissioner pursuant to this section may be appealed by filing, in the Franklin Circuit Court, a petition for judicial review in accordance with KRS Chapter 13B.

➔SECTION 9. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS

CREATED TO READ AS FOLLOWS:

- (1) Each student loan servicer shall keep, for at least three (3) years, and use in its business such books, accounts, and records as will enable the commissioner to determine whether the servicer is complying with the provisions of this subtitle and with the administrative regulations promulgated pursuant to this subtitle.
- (2) Each licensee shall annually file a report with the commissioner giving such information as the commissioner may require concerning the licensee's business and operations during the preceding calendar year. The report shall be subscribed and affirmed as true by the licensee under the penalties of perjury and shall be in the form prescribed by the commissioner.
- (3) The commissioner may require additional regular or special reports from student loan servicers as the commissioner may deem necessary for the proper supervision of regulated persons under this subtitle. The additional reports shall be subscribed and affirmed as true by the servicer under the penalties of perjury and shall be in the form prescribed by the commissioner.

→SECTION 10. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS

CREATED TO READ AS FOLLOWS:

Whenever, in the opinion of the commissioner, a person is unlawfully engaged in the business of servicing student loans in this state, either actually or through subterfuge, without a license, the commissioner may order that person to desist and refrain from the unlawful activity. If within thirty (30) days after an order is served, a request for a hearing is filed in writing and the hearing is not held within sixty (60) days of the filing, the order shall be rescinded.

→SECTION 11. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS

CREATED TO READ AS FOLLOWS:

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- (1) The provisions of this subtitle shall be enforced by the commissioner, who may promulgate administrative regulations in accordance with KRS Chapter 13A for the proper conduct of the business regulated under this subtitle.
- (2) (a) For the purposes of enforcing the provisions of this subtitle, the commissioner may conduct routine examinations of the books, accounts, records, and files of:
1. Any licensee; 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) The commissioner may also conduct investigations of licensees, student 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) For the purpose of making examinations or investigations under this section, the commissioner and the commissioner's representatives:
1. May:
    - a. Compel the attendance of any person, or obtain any documents, by subpoenas;
    - b. Administer oaths and affirmations; and
    - c. Examine under oath or affirmation all persons whose testimony the commissioner may require, relative to the loans or business of the persons regulated under this subtitle; and
  2. Shall have free access to the accounts, papers, records, files, safes, vaults, offices, and places of business used in connection with any business regulated under this subtitle.
- (3) If any person fails to comply with a subpoena issued by the commissioner under this

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section, the commissioner may petition the Franklin Circuit Court or any court of competent jurisdiction for enforcement of the subpoena.

(4) (a) The expenses incurred in performing an examination pursuant to subsection (2)(a) of this section shall be assessed and paid by the student loan servicer.

(b) Traveling and subsistence expenses shall be charged against and paid by the servicer in such proportions as the commissioner deems just and reasonable and shall be added to the assessment of the other expenses incurred upon each examination.

(c) Upon written notice by the commissioner of the total amount of the assessment, the servicer shall become liable for and shall pay the assessment to the commissioner.

(5) In order to carry out the purposes of this subtitle, the commissioner may:

(a) Retain examiners, auditors, investigators, attorneys, 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.

(6) 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.

(7) In any hearing in which a department employee acting under authority of this subtitle is available for cross-examination, any official written report, worksheet, other related papers, or duly certified copy thereof, compiled, prepared, drafted, or otherwise made by the department employee, after being duly authenticated by the employee, may be admitted as competent evidence upon the oath of the employee that the worksheet, report, or other related papers were prepared as a result of an examination of the books



and records of a servicer or other person, conducted pursuant to the authority of this subtitle.

(8) If reports from, or 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 12. 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 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 understand a term or condition of a student loan; or

(b) Take unreasonable advantage of any of the following:

1. A lack of understanding on the part of the borrower of the material risks, costs, or conditions of the student loan;

2. The inability of a borrower to protect the interests of the borrower when selecting or using a student loan or a feature, term, or condition of a student loan; or

3. The reasonable reliance by the borrower on the student loan servicer to act in the interests of the borrower.

(3) A student 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 loan, including but not limited to:
1. Misrepresenting the amount, nature, or terms of any fee or payment due or claimed to be due on a student loan;
  2. Misrepresenting the terms and conditions of the student loan agreement;
  3. Misrepresenting the borrower's obligations under the student loan; or
  4. 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 who provides a written authorization signed by the borrower, except the servicer may adopt reasonable procedures for:
1. Verifying 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 reports filed with a governmental agency or in connection with any investigation conducted by the commissioner, the student loan ombudsman, or any other governmental agency;
- (f) If the student loan servicer is required to report, or voluntarily reports, to a consumer reporting agency, fail to accurately report each borrower's payment performance to at least one (1) consumer reporting agency, upon acceptance as a

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data furnisher by that consumer reporting agency;

(g) Fail to respond to a communication from the commissioner or the student loan ombudsman, as applicable, within ten (10) business days, or within a shorter, reasonable time as the commissioner or student loan ombudsman may provide in the communication; or

(h) Fail to respond to a borrower complaint submitted to the servicer by the commissioner or student loan ombudsman, as applicable, within ten (10) business days of receipt of the complaint, or a longer time as the commissioner or student loan ombudsman may permit, not to exceed forty-five (45) days, upon request from the servicer explaining why the additional time is reasonable and necessary.

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

(1) (a) As used in this section:

1. "Best financial interest of the borrower" means reducing the total cost of a student loan, including principal balance, interest, and fees;

2. "Minimum late fee" includes any fee that is not assessed as a percentage of any amount past due; and

3. "Qualified request" means any inbound telephone call, the subject of which cannot be resolved in a single telephone call, made by a borrower to a student loan servicer in which the borrower either:

a. Requests specific information from the student loan servicer; or

b. Reports what the borrower believes to be an error regarding the borrower's account.

(b) 1. As used in subsection (2)(c) and (p) of this section, "negative consequences" includes but is not limited to negative credit reporting, lost eligibility for a

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borrower benefit, late fees, interest capitalization, and other financial injury.

2. As used in subsection (2)(r) of this section, "negative consequences" includes but is not limited to negative credit reporting, imposition of late fees not required by the promissory note, and loss or denial of eligibility for any benefit or protection established under federal law or included in the loan contract.

(c) As used in subsection (2)(t) of this section, "necessary information" includes but is not limited to the following:

1. A schedule for all transactions credited or debited to the student loan account;

2. A copy of the promissory note for the student loan;

3. Any notes created by a student loan servicer's personnel reflecting communication with the borrower about the student loan account;

4. A report of the data fields relating to the borrower's student loan account created by the student loan servicer's electronic systems in connection with servicing practices;

5. Copies or electronic records or any information or documents provided by the borrower to the student loan servicer;

6. Usable data fields with information necessary to assess qualification for forgiveness, including public service loan forgiveness, if applicable; and

7. Any information necessary to compile payment history.

(2) A student loan servicer shall:

(a) Post and process student loan payments in a timely manner pursuant to the servicer's established payment processing policies, which shall be disclosed and readily accessible to borrowers;

**(b) Credit student loan payments in a timely manner in accordance with the following:**

**1. A payment received before 11:59 p.m. on the date on which that payment is due, in the amount, manner, and location indicated by the servicer, shall be credited as effective on the date on which the payment was received by the servicer. A servicer shall treat a payment received from the borrower on the borrower's due date as an on-time payment; and**

**2. If a payment is made by check, credit the payment on the date the check was received by the servicer regardless of the date of processing. A borrower's online account shall reflect payments made within three (3) business days of the date of payment unless payment is made by check and contains no information identifying to which account or loan the payment should be credited. If the servicer receives a paper check with no information identifying to which account or loan the payment should be credited, the servicer shall:**

**a. Within ten (10) days, determine to which account and loan the payment should be credited and credit the payment as of the date it was received by the servicer; and**

**b. Within one (1) business day of the determination made under subdivision a. of this subparagraph, update the borrower's online account;**

**(c) If a servicer makes a material change in the mailing address, office, or procedures for handling borrower payments and the change causes a material delay in the crediting of a borrower payment made during the sixty (60) day period following the date on which the change took effect, not impose on the borrower any negative consequences related to the material change;**

- (d) Inquire of a borrower how to apply an overpayment to a student loan. A borrower's direction on how to apply an overpayment to a student loan shall be effective with respect to future overpayments during the term of a student loan until the borrower provides a different direction;
- (e) In the absence of a direction provided by a borrower under paragraph (d) of this subsection, allocate an overpayment on a student loan account in a manner that is in the best financial interest of the borrower. A servicer shall be considered to have met the requirements of this paragraph if the servicer allocates the overpayment to the loan with the highest interest rate on the borrower's student loan account;
- (f) Except as otherwise provided by a student loan agreement, comply with a direction provided by a borrower as to how to allocate a partial payment to a student loan;
- (g) In the absence of a direction provided by a borrower under paragraph (f) of this subsection, allocate a partial payment in a manner that minimizes late fees and negative credit reporting. A servicer shall be considered to have met the requirements of this paragraph if, when there are multiple loans on a borrower's student loan account at an equal stage of delinquency, the servicer allocates partial payments to satisfy as many loans as possible on a borrower's student loan account;
- (h) If a servicer imposes a fee on a borrower for a past due student loan payment, ensure that the fee:
1. Is reasonable and proportional to the total costs incurred as a result of the late payment by the borrower; and
  2. Does not exceed six percent (6%) of any amount past due;
- (i) Not impose a minimum late fee;
- (j) Diligently oversee its service providers, including maintaining policies and

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- procedures to oversee compliance by third-party service providers engaged in any aspect of student loan servicing;
- (k) Have joint and several liability for the conduct of its service providers for any act or practice that violates this subtitle;
- (l) Timely process its paperwork, consistent with existing federal requirements, including but not limited to ensuring the servicer's personnel have received the following:
1. Appropriate training on the handling of paperwork; and
  2. Access to necessary information about forms and applications that are in process, have been approved, or have been denied, including but not limited to applications for income-driven repayment plans and other forms required to access benefits and protections for federal student loans, as described in 20 U.S.C. secs. 1070 et seq., as amended;
- (m) Except as required by the student loan agreement, maintain all records about a borrower's account for the period of time during which a servicer performs student loan servicing for the borrower's account and for a minimum of three (3) years after the loan serviced has been paid in full, assigned to collection, or the servicing rights have been transferred;
- (n) Treat a qualified request as if it were a qualified written request and comply with paragraph (w) of this subsection with respect to the qualified request;
- (o) Maintain policies and procedures permitting a borrower who is dissatisfied with the outcome of an initial qualified request to escalate the borrower's concern to a supervisor;
- (p) Except as provided in paragraph (q) of this subsection, protect borrowers from any negative consequences that are directly related to the issue identified in a

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borrower's qualified request or qualified written request until that request has been resolved;

(q) After receipt of a qualified request or qualified written request related to a borrower's payment dispute on a student loan, not, for sixty (60) days, furnish information to a consumer reporting agency regarding a payment that is the subject of the qualified request or qualified written request;

(r) Protect borrowers from any negative consequences stemming from a sale, assignment, transfer, system conversion, or payment made by the borrower to the original student loan servicer consistent with the original student loan servicer's policy;

(s) If a sale, assignment, or other transfer of the servicing of a student loan results in a change in the identity of the party to whom the borrower is required to send payments or direct any communications concerning the student loan, notify the borrower in writing at least fifteen (15) days before the borrower is required to send a payment on the student loan of the following:

1. If applicable, the license number issued by the commissioner of the new student loan servicer;

2. The name and address of the new student loan servicer to whom subsequent payments or communications are to be sent;

3. The telephone numbers and the Web sites of the new student loan servicer;

4. The effective date of the sale, assignment, or transfer;

5. The date on which the current student loan servicer will stop accepting payments on the borrower's student loan; and

6. The date on which the new student loan servicer will begin accepting payments on the borrower's student loan;



- (t) Ensure that all necessary information regarding a borrower, a borrower's account, and a borrower's student loan accompanies a loan when it transfers to a new student loan servicer within forty-five (45) calendar days of the effective date of the sale, assignment, or transfer;
- (u) Provide specialized training for any customer service personnel to advise:
1. Military borrowers about student loan repayment benefits and protections;
  2. Borrowers working in public service about student loan repayment benefits and protections;
  3. Older borrowers about the risks specifically applicable to older borrowers to ensure that, once identified, older borrowers are informed about student loan repayment benefits and protections, including disability discharge programs for private and federal loans, if applicable, and to the extent an older borrower serves as cosigner, about cosigner release provisions in private student loan contracts; and
  4. Borrowers with disabilities about student loan repayment benefits and protections, including disability discharge programs for private and federal loans;
- (v) Not engage in an unfair or deceptive practice toward any borrower with a disability or misrepresent or omit any material information in connection with servicing a student loan owed by a borrower with a disability, including but not limited to misrepresenting or omitting the following:
1. The availability of any program or protection specific to borrowers with disabilities or applicable to those borrowers;
  2. The amount, nature, or terms of any fee or payment due, or claimed to be due, on a student loan;

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- 3. The terms and conditions of the student loan agreement; and**
  - 4. The borrower's obligations under the student loan;**
- (w) 1. Respond to a qualified written request by:**
- a. Acknowledging receipt of the request within ten (10) business days; and**
  - b. Within thirty (30) business days of receipt of the request, providing information relating to the request and, if applicable, either the action the student loan servicer will take to correct the account or an explanation for the position that the borrower's account is correct.**
- 2. The thirty (30) day period described in this paragraph may be extended for not more than fifteen (15) days if, before the end of the thirty (30) day period, the servicer notifies the borrower of the extension and the reason for the delay in responding;**
- (x) Respond within ten (10) business days to communications from the student loan ombudsman, or within a shorter, reasonable time as the student loan ombudsman may provide in the communication; and**
- (y) Provide information to borrowers, in writing, about the availability of loan forgiveness programs and income-driven repayment plan opportunities.**

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

**In addition to the requirements contained in this subtitle, student loan servicers shall comply with all applicable provisions of this chapter and all applicable federal laws.**

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

**In addition to any other remedies, penalties, or damages available under common law or statute, the commissioner may, after notice and hearing, impose a penalty for a violation of**

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this subtitle not to exceed the greater of:

- (1) Two thousand dollars (\$2,000) or for a willful violation, ten thousand dollars (\$10,000);
- (2) A multiple of two (2) times the aggregate damages attributable to the violation; or
- (3) A multiple of two (2) times the aggregate economic gain attributable to the violation.

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

(1) A student loan servicer shall include a notice on or with a borrower's monthly statement which shall:

(a) Inform the borrower of the borrower's rights under state and federal law with respect to a student loan; and

(b) Include:

1. The amount the borrower owes as of the statement date;

2. The portion of the amount under subparagraph 1. of this paragraph that is principal;

3. The portion of the amount under subparagraph 1. of this paragraph that is interest; and

4. The amount the borrower would owe if the borrower missed a payment.

(2) The notice required under this section shall be in the form established by the commissioner through the promulgation of administrative regulations in accordance with KRS Chapter 13A.

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

(1) Subject to the requirements of this section, any borrower who suffers damages as a result of a student loan servicer's failure to comply with any provision of this subtitle may bring a civil cause of action on the borrower's behalf, and on behalf of similarly

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situated borrowers, against the student loan servicer to recover or obtain the following:

(a) Actual damages, but in no case shall the total award of damages be less than five hundred dollars (\$500);

(b) An order enjoining the methods, acts, or practices;

(c) Restitution of property;

(d) Punitive damages;

(e) Attorney's fees; and

(f) Any other relief the court deems proper.

(2) In addition to any other remedies, penalties, or damages available under common law or statute, if it is proven by a preponderance of the evidence that a student loan servicer has engaged in conduct that substantially interferes with a borrower's right to an alternative payment arrangement, loan forgiveness, loan cancellation, loan discharge, or any other financial benefit as established under the terms of the borrower's promissory note or under the Higher Education Act of 1965, 20 U.S.C. secs. 1070a et seq., as amended, or the regulations promulgated thereunder, the court shall award treble actual damages to the plaintiff, but in no case shall the award of damages be less than one thousand five hundred dollars (\$1,500) per plaintiff, per violation.

(3) At least forty-five (45) days before bringing an action against a student loan servicer under this section, a borrower shall provide written notice, by certified mail, return receipt requested, or by registered mail, to the address on file with the department, or the principal place of business, of the student loan servicer that:

(a) States the nature of the alleged violation; and

(b) Demands that the student loan servicer correct and remedy the violation.

(4) An action for damages or injunctive relief brought under this section by a borrower:

(a) Only on behalf of the borrower, shall not be maintained upon a showing by the

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- student loan servicer that the appropriate correction and remedy has been given, or agreed to be given within a reasonable time, to the borrower within thirty (30) days after receipt of the notice provided under subsection (3) of this section; or
- (b) On behalf of the borrower and similarly situated borrowers shall not be maintained upon a showing by the student loan servicer that:
1. All borrowers similarly situated have been identified, or a reasonable effort has been made to identify the borrowers;
  2. All borrowers identified under subparagraph 1. of this paragraph have been notified that, upon the borrower's request, the student loan servicer shall make the appropriate correction and remedy;
  3. The correction and remedy requested by the borrowers has been, or within a reasonable time will be, given; and
  4. The student loan servicer has ceased engaging in or, if immediate cessation is impossible or unreasonably expensive under the circumstances, will cease to engage in within a reasonable time, the methods, acts, or practices alleged to be in violation of this subtitle.
- (5) (a) An attempt to comply with a demand under subsection (3) of this section shall:
1. Be construed to be an offer or compromise that is inadmissible as evidence pursuant to Rule 408 of the Kentucky Rules of Evidence; and
  2. Not be considered an admission of a violation of any provision of this subtitle.
- (b) Evidence of compliance, or attempts to comply, with this section may be introduced by a defendant for the purpose of establishing good faith or to show compliance with this subtitle.

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

- (1) The commissioner may monitor risks to consumers in the provision of student loan servicing in this state, including developments in the market for those services, by compiling and analyzing data and other information based on any of the following considerations:
- (a) The likely risks and costs to borrowers associated with using or repaying a student loan or with the servicing of a student loan;
  - (b) Consumers' understanding of the risks of a student loan or the servicing of a student loan;
  - (c) The legal protections applicable to the offering, provision, or servicing of a student loan, including the extent to which the law is likely to adequately protect consumers;
  - (d) The rates of growth in the offering, provision, or servicing of student loans;
  - (e) The extent, if any, to which the risks of a student loan or the servicing of a student loan disproportionately affect traditionally underserved consumers; and
  - (f) The type, number, and other pertinent characteristics of student loan servicers in this state.
- (2) In conducting any monitoring or assessment authorized by this section, the commissioner may gather information regarding the organization, business conduct, markets, and activities of student loan servicers in this state;
- (3) In order to gather the information described in subsection (1) of this section, the commissioner may:
- (a) Gather and compile information from a variety of sources, including consumer complaints, voluntary surveys and interviews of consumers, surveys and interviews with student loan servicers and service providers, and review of available databases; and

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(b) Require persons engaged in student loan servicing in this state, under oath or affirmation, in the form and within a reasonable period of time as the commissioner may prescribe, to file annual or special reports, or answers in writing to specific questions, under Section 9 of this Act, as necessary for the commissioner to fulfill the monitoring, assessment, and reporting responsibilities under this subtitle.

(4) The commissioner may:

(a) In addition to any other market-monitoring activities deemed necessary by the commissioner under subsection (1) of this section, gather and compile information from student loan servicers to assemble data that assesses the total size of the student loan market in this state, the servicing of student loans owed by borrowers at risk of default, the servicing of private student loans owed by borrowers experiencing financial distress, and the servicing of federal student loans for borrowers who seek to repay their loans under an income driven repayment plan as described in 20 U.S.C. secs. 1070 et seq.;

(b) On a quarterly basis, develop and publish:

1. Metrics based on data collected pursuant to this section which may identify each student loan servicer; and
2. Relevant metrics related to performance of student loan servicing by each student loan servicer; and

(c) Confer with the student loan ombudsman to develop and publish the information described in this subsection.

(5) The commissioner may enter into contracts to carry out the activities permitted in this section.

➔SECTION 19. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS

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CREATED TO READ AS FOLLOWS:

- (1) The commissioner shall designate a student loan ombudsman to work within the department. The student loan ombudsman shall hire additional staff necessary to implement this section.
- (2) The student loan ombudsman shall have the following duties:

  - (a) Receiving, reviewing, and attempting to resolve borrower complaints;
  - (b) Referring borrower complaints in accordance with this section;
  - (c) Compiling and analyzing data on the number of borrower complaints:

    1. Received by the department; and
    2. Referred to any other state or federal agency;
  - (d) Providing information to the public, agencies, legislators, and others regarding the problems and concerns of borrowers and making recommendations for resolving those problems and concerns;
  - (e) Analyzing and monitoring the development and implementation of federal and state laws and policies relating to borrowers;
  - (f) Disseminating information concerning the availability of any other state and federal agency to accept complaints from individual borrowers and potential borrowers; and
  - (g) Requesting and compiling information provided by any student loan servicer if reasonably determined by the student loan ombudsman to be necessary to effectuate the duties described in this section.
- (3) The student loan ombudsman shall:

  - (a) Confer with any applicable state or federal agency regarding:

    1. The proper referral process for borrower complaints regarding student loans;
  - and



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2. The reporting requirements of the student loan ombudsman under this subtitle; and
- (b) Refer borrower complaints regarding student loans not subject to this subtitle to the applicable state or federal agency with jurisdiction to investigate the complaint.
- (4) For borrower complaints submitted to the student loan ombudsman concerning student loan servicers subject to this subtitle:
- (a) The student loan ombudsman shall send a copy of the complaint to the student loan servicer;
- (b) The student loan servicer shall send a written or electronic message response to the student loan ombudsman in accordance with subsection (3)(h) of Section 12 of this Act;
- (c) Upon review of the complaint and response, the student loan ombudsman shall attempt to resolve the complaint; and
- (d) 1. If the complaint is not resolved, the student loan ombudsman shall make written findings to the student loan servicer, the borrower, and the commissioner.
2. The commissioner shall review and investigate, where applicable, all written findings made by the student loan ombudsman to determine if enforcement actions under this subtitle are appropriate.
- (5) Within eighteen (18) months of the effective date of this Act, and annually thereafter, the student loan ombudsman shall submit a report to the Interim Joint Committees on Education and Banking and Insurance containing information on the following:
- (a) The implementation of this section;
- (b) The types and number of complaints received regarding student loan borrowing, student loan repayment and servicing, and how the complaints were resolved; and

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**(c) Other data and analysis on outstanding student loan issues faced by borrowers.**

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

- (1) Except as provided in KRS 5.005 **and Section 8 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

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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.

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(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. Within 180 days of the effective date of this Act, the commissioner of the Department of Financial Institutions shall designate a student loan ombudsman in accordance with Section 19 of this Act.

➔Section 22. If any provision of this Act, or this Act's application 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 applications of this Act are severable."