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**SENATE BILL 6610**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Senators Liias, Frockt, Rolfes, Carlyle, Nelson, Billig, Mullet, Conway, Darneille, Keiser, McAuliffe, and Habib

AN ACT Relating to establishing a student loan bill of rights; adding a new section to chapter 28B.77 RCW; and adding new sections to chapter 43.320 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 28B.77 RCW to read as follows:

(1) The council shall designate a student loan ombuds within the office to provide timely assistance to any student loan borrower of any student education loan.

(2) The student loan ombuds, in consultation with the attorney general and the director of the department of financial institutions, shall:

(a) Receive, review, and refer to the state attorney general or the department of financial institutions complaints from student loan borrowers including, but not limited to, attempts to resolve such complaints in collaboration with institutions of higher education, student loan servicers and any other participants in student loan lending including, but not limited to, the four-year institutions of higher education;

(b) Compile and analyze data on student loan borrower complaints as described in (a) of this subsection;

(c) Assist student loan borrowers to understand their rights and responsibilities under the terms of student education loans;

(d) Provide information to the public, agencies, legislators, and others regarding the problems and concerns of student loan borrowers and make recommendations for resolving those problems and concerns;

(e) Analyze and monitor the development and implementation of federal, state, and local laws, rules, regulations, and policies relating to student loan borrowers and recommend any changes the student loan ombuds deems necessary;

(f) Review the complete student education loan history for any student loan borrower who has provided written consent for such review;

(g) Disseminate information concerning the availability of the student loan ombuds to assist student loan borrowers and potential student loan borrowers, as well as institutions of higher education, student loan servicers, and any other participant in student education loan lending, with any student loan servicing concerns; and

(h) Take any other actions necessary to fulfill the duties of the student loan ombuds as provided in this subsection.

(3) By October 1, 2017, the student loan ombuds, in consultation with the council, shall establish and maintain a student loan borrower education course that includes educational presentations and materials regarding issues surrounding student education loans. The program must include, but not be limited to, key loan terms, documentation requirements, monthly payment obligations, income-based repayment options, loan forgiveness, disclosure requirements, federal gainful employment laws, and the veterans loophole in the ninety-ten rule.

(4) By December 31, 2016, and annually thereafter, the council shall submit a report to the appropriate committees of the legislature having cognizance of matters relating to banking and higher education. The council shall report on:

(a) The implementation of this section;

(b) The overall effectiveness of the student loan ombuds position; and

(c) Additional steps that need to be taken for the council to gain regulatory control over the licensing and enforcement of student loan servicers.

(5) The student loan ombuds account is created in the custody of the state treasurer. All receipts from appropriations by the legislature and any licensing or investigation fees collected pursuant to section 3(2) of this act must be deposited into the account. Only the executive director or the student loan ombuds may authorize expenditures from the student loan ombuds account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Expenditures from the account may be used solely for administering the provisions of this section.

(6) The definitions in section 2 of this act apply to this section.

NEW SECTION. **Sec.**  A new section is added to chapter 43.320 RCW to read as follows:

The definitions in this section apply throughout sections 1 and 3 through 10 of this act, unless the context clearly requires otherwise.

(1) "Director" means the director of the department of financial institutions.

(2) "Servicing" means:

(a) Receiving any scheduled periodic payments from a student loan borrower pursuant to the terms of a student education loan;

(b) Applying the payments of principal and interest and such other payments with respect to the amounts received from a student loan borrower, as may be required pursuant to the terms of a student education loan; and

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

(3) "Student education loan" means any loan primarily for personal use to finance education or other school-related expenses.

(4) "Student loan borrower" means:

(a) Any resident of this state who has received or agreed to pay a student education loan; or

(b) Any person who shares responsibility with such resident for repaying the student education loan.

(5) "Student loan servicer" means any person, wherever located, responsible for the servicing of any student education loan to any student loan borrower.

NEW SECTION. **Sec.**  A new section is added to chapter 43.320 RCW to read as follows:

(1)(a) No person may act as a student loan servicer, directly or indirectly, without first obtaining a license from the director under subsection (2) of this section, unless such person is exempt from licensure pursuant to (b) of this subsection.

(b) The following persons are exempt from student loan servicer licensing requirements: (i) Any bank, out-of-state bank, Washington state credit union, federal credit union, or out-of-state credit union; (ii) any wholly owned subsidiary of any such bank or credit union; and (iii) any operating subsidiary where each owner of such operating subsidiary is wholly owned by the same bank or credit union.

(2)(a) Any person seeking to act within this state as a student loan servicer shall make a written application to the director for an initial license in such form as the director prescribes. The application shall be accompanied by:

(i) A financial statement prepared by a certified public accountant or a public accountant, the accuracy of which is sworn to under oath before a notary public by the proprietor, a general partner, or a corporate officer, or a member duly authorized to execute such documents;

(ii) The history of criminal convictions of the (A) applicant; (B) partners, if the applicant is a partnership; (C) members, if the applicant is a limited liability company or association; or (D) officers, directors, and principal employees, if the applicant is a corporation; and

(iii) Sufficient information pertaining to the history of criminal convictions of such applicant, partners, members, officers, directors, or principal employees as the director deems necessary to make the findings under subsection (3)(c) of this section;

(iv) A nonrefundable license fee of one thousand dollars; and

(v) A nonrefundable investigation fee of eight hundred dollars.

(b) The director may conduct a state and national criminal history record check of the applicant and of each partner, member, officer, director, and principal employee of the applicant.

(3) Upon the filing of an application for an initial license and the payment of the fees for license and investigation, the director shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant. The director may issue a license if the director finds that:

(a) The applicant's financial condition is sound;

(b) The applicant's business will be conducted honestly, fairly, equitably, carefully, and efficiently within the purposes and intent of sections 2 through 10 of this act, and in a manner commanding the confidence and trust of the community;

(c)(i) If the applicant is an individual, such individual is in all respects properly qualified and of good character;

(ii) If the applicant is a partnership, each partner is in all respects properly qualified and of good character;

(iii) If the applicant is a corporation or association, the president, chair of the executive committee, senior officer responsible for the corporation's business and chief financial officer, or any other person who performs similar functions as determined by the director, and each director, each trustee, and each shareholder owning ten percent or more of each class of the securities of such corporation is in all respects properly qualified and of good character; or

(iv) If the applicant is a limited liability company, each member is in all respects properly qualified and of good character;

(d) No person on behalf of the applicant knowingly has made any incorrect statement of a material fact in the application, or in any report or statement made pursuant to sections 2 through 10 of this act;

(e) No person on behalf of the applicant knowingly has omitted to state any material fact necessary to give the director any information lawfully required by the director;

(f) The applicant has paid the investigation fee and the license fee required under subsection (2) of this section; and

(g) The applicant has met any other similar requirements as determined by the director.

(4) A license issued pursuant to subsection (3) of this section expires at the close of business on September 30th of the odd-numbered year following its issuance, unless renewed or earlier surrendered, suspended, or revoked pursuant to sections 2 through 10 of this act. Not later than fifteen days after a licensee ceases to engage in the business of student loan servicing in this state for any reason, including a business decision to terminate operations in this state, license revocation, bankruptcy, or voluntary dissolution, the licensee must provide written notice of surrender to the director and must surrender to the director its license for each location in which the licensee has ceased to engage in such business. The written notice of surrender must identify the location where the records of the licensee will be stored and the name, address, and telephone number of an individual authorized to provide access to the records. The surrender of a license does not reduce or eliminate the licensee's civil or criminal liability arising from acts or omissions occurring before the surrender of the license, including any administrative actions undertaken by the director to revoke or suspend a license, assess a civil penalty, order restitution, or exercise any other authority provided to the director.

(5) A license may be renewed for the ensuing twenty-four month period upon the filing of an application containing all required documents and fees as provided in subsection (2) of this section. The renewal application shall be filed on or before September 1st of the year in which the license expires. Any renewal application filed with the director after September 1st must be accompanied by a one hundred dollar late fee and any such filing shall be deemed to be timely and sufficient. If an application for a renewal license has been filed with the director on or before the date the license expires, the license sought to be renewed continues in full force and effect until the issuance by the director of the renewal license applied for or until the director has notified the licensee in writing of the director's refusal to issue such renewal license together with the grounds upon which the refusal is based. The director may refuse to issue a renewal license on any ground on which the commissioner might refuse to issue an initial license.

(6) If the director determines that a check filed with the director to pay a license or renewal fee has been dishonored, the director shall automatically suspend the license or the renewal license that has been issued but is not yet effective. The director must give the licensee notice of the automatic suspension pending proceedings for revocation or refusal to renew and an opportunity for a hearing on such actions in accordance with the administrative procedure act, chapter 34.05 RCW.

(7) The applicant or licensee shall notify the director, in writing, of any change in the information provided in its initial application for a license or its most recent renewal application for such license, as applicable, not later than ten business days after the occurrence of the event that results in such information becoming inaccurate.

(8) The director may deem an application for a license abandoned if the applicant fails to respond to any request for information required under sections 2 through 10 of this act, or any rules adopted pursuant to sections 2 through 10 of this act. The director must notify the applicant, in writing, that if the applicant fails to submit such information not later than sixty days after the date on which such request for information was made, the application shall be deemed abandoned. An application filing fee paid before the date an application is deemed abandoned pursuant to this subsection shall not be refunded. Abandonment of an application under this subsection does not preclude the applicant from submitting a new application for a license under the provisions of sections 2 through 10 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 43.320 RCW to read as follows:

No person licensed to do business within this state as a student loan servicer may do so under any other name or at any other place of business than that named in the license. Any change of location of a place of business of a licensee requires prior written notice to the director. Only one place of business may be maintained under the same license but the director may issue more than one license to the same licensee upon compliance with the provisions of sections 2 through 10 of this act as to each new licensee. A license is not transferable or assignable.

NEW SECTION. **Sec.**  A new section is added to chapter 43.320 RCW to read as follows:

(1) Each student loan servicer licensee and persons exempt from licensure under section 3(1)(b) of this act must maintain adequate records of each student education loan transaction for not less than two years following the final payment on such student education loan or the assignment of such student education loan, whichever occurs first, or such longer period as may be required by any other provision of law.

(2) If requested by the director, each student loan servicer must make such records available or send such records to the director by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt, not later than five business days after requested by the director to do so. Upon request, the director may grant a licensee additional time to make such records available or send the records to the director.

NEW SECTION. **Sec.**  A new section is added to chapter 43.320 RCW to read as follows:

No student loan servicer may:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead student loan borrowers;

(2) Engage in any unfair or deceptive practice toward any person or misrepresent or omit any material information in connection with the servicing of a student education loan including, but not limited to, misrepresenting the amount, nature, or terms of any fee or payment due or claimed to be due on a student education loan, the terms and conditions of the loan agreement, or the borrower's obligations under the loan;

(3) Obtain property by fraud or misrepresentation;

(4) Knowingly misapply or recklessly apply student education loan payments to the outstanding balance of a student education loan;

(5) Knowingly or recklessly provide inaccurate information to a credit bureau, thereby harming a student loan borrower's creditworthiness;

(6) Fail to report both the favorable and unfavorable payment history of the student loan borrower to a nationally recognized consumer credit bureau at least annually if the student loan servicer regularly reports information to a credit bureau;

(7) Refuse to communicate with an authorized representative of the student loan borrower who provides a written authorization signed by the student loan borrower; however, the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower; or

(8) Negligently make any false statement or knowingly and willfully make any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the department of financial institutions or another governmental agency.

NEW SECTION. **Sec.**  A new section is added to chapter 43.320 RCW to read as follows:

(1) The director, in consultation with the attorney general, may conduct investigations and examinations as follows:

(a) For purposes of initial licensing, license renewal, license suspension, license revocation or termination, or general or specific inquiry or investigation to determine compliance with sections 2 through 10 of this act, the director may access, receive, and use any books, accounts, records, files, documents, information, or evidence including, but not limited to: (i) Criminal, civil, and administrative history information; (ii) personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the fair credit reporting act, 15 U.S.C. Sec. 1681a; and (iii) any other documents, information, or evidence the director deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.

(b) For the purposes of investigating violations or complaints arising under sections 2 through 10 of this act or for the purposes of examination, the director may review, investigate, or examine any student loan servicer licensee or person subject to sections 2 through 10 of this act as often as necessary in order to carry out the purposes of sections 2 through 10 of this act. The director may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the student education loan or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the commissioner deems relevant to the inquiry.

(2) In making any examination or investigation authorized by this section, the director may control access to any documents and records of the student loan servicer licensee or person under examination or investigation. The director may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no person may remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the director. Unless the director has reasonable grounds to believe the documents or records of the student loan servicer licensee or person have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of sections 2 through 10 of this act, the student loan servicer licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(3) In order to carry out the purposes of this section, the director may:

(a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

(c) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the student loan servicer licensee or person subject to sections 2 through 10 of this act;

(d) Accept and rely on examination or investigation reports made by other government officials, within or without this state; and

(e) Accept audit reports made by an independent certified public accountant for the student loan servicer licensee or person subject to sections 2 through 10 of this act in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of examination, report of investigation, or other writing of the director.

(4) The authority of this section remains in effect, whether such student loan servicer licensee or person subject to sections 2 through 10 of this act, acts or claims to act under any licensing or registration law of this state, or claims to act without such authority.

(5) No student loan servicer licensee or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

NEW SECTION. **Sec.**  A new section is added to chapter 43.320 RCW to read as follows:

(1) The director may suspend, revoke, or refuse to renew any license issued under the provisions of section 3(3) of this act if the director finds that (a) the licensee has violated any provision of sections 2 through 10 of this act or any rule or order lawfully made pursuant to and within the authority of sections 2 through 10 of this act or (b) any fact or condition exists which, if it had existed at the time of the original application for the license, clearly would have warranted a denial of the license. No abatement of the license fee may be made if the license is surrendered, revoked, or suspended before the expiration of the period for which it was issued.

(2) Whenever it appears to the director that any person has violated, is violating, or is about to violate any of the provisions of sections 2 through 10 of this act, or any rule adopted pursuant to sections 2 through 10 of this act, or any licensee or any owner, director, officer, member, partner, shareholder, trustee, employee, or agent of such licensee has committed any fraud, engaged in dishonest activities, or made any misrepresentation, the director may take action against such person or licensee.

NEW SECTION. **Sec.**  A new section is added to chapter 43.320 RCW to read as follows:

A student loan servicer shall comply with all applicable federal laws and regulations relating to student loan servicing including, but not limited to, the truth-in-lending act, 15 U.S.C. Sec. 1601 et seq., as from time to time amended, and the regulations adopted thereunder. In addition to any other remedies provided by law, a violation of any such federal law or regulation shall be deemed a violation of this section and a basis upon which the director may take enforcement action pursuant to section 8 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 43.320 RCW to read as follows:

The legislature finds that the practices governed by sections 3 through 9 of this act are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive.

NEW SECTION. **Sec.**  A new section is added to chapter 43.320 RCW to read as follows:

The director shall adopt such rules as are necessary to implement the provisions of this section and sections 2 through 9 of this act.

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