

HOUSE BILL NO. 1274

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KENDRICK.

4615H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 173, RSMo, by adding thereto fourteen new sections relating to student loans.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 173, RSMo, is amended by adding thereto fourteen new sections, to
2 be known as sections 173.2300, 173.2301, 173.2302, 173.2304, 173.2306, 173.2308, 173.2310,
3 173.2312, 173.2314, 173.2316, 173.2318, 173.2322, 173.2324, and 173.2326, to read as follows:

**173.2300. 1. The provisions of sections 173.2300 to 173.2326 shall be known and
2 may be cited as the "Student Loan Bill of Rights".**

3 2. For purposes of sections 173.2300 to 173.2326, the following terms mean:

4 (1) "Department", the department of higher education;

5 (2) "Servicing":

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

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

**11 (c) Performing other administrative services with respect to a student education
12 loan;**

**13 (3) "Student education loan", any loan primarily for personal use to finance
14 education or other school-related expenses;**

15 (4) "Student loan borrower":

**16 (a) Any resident of the state of Missouri who has received or agreed to pay a
17 student education loan; or**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

173.2301. 1. The coordinating board for higher education shall establish within the
2 department of higher education the Office of the Student Loan Ombudsman. The office
3 of the student loan ombudsman shall provide timely assistance to any student loan
4 borrower, as defined under section 173.2300, of any student education loan, as defined
5 under section 173.2300, in the state of Missouri. All state agencies shall assist and
6 cooperate with the office of the student loan ombudsman in the performance of its duties
7 under sections 173.2300 to 173.2326.

8 2. The office of the student loan ombudsman, in consultation with the coordinating
9 board for higher education, shall:

10 (1) Receive, review, and attempt to resolve any complaints from student loan
11 borrowers, including attempts to resolve such complaints in collaboration with institutions
12 of higher education, student loan servicers as defined under section 173.2300, and any
13 other participants in student loan lending;

14 (2) Compile and analyze data on student loan borrower complaints as described
15 in subdivision (1) of this subsection;

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

18 (4) Provide information to the public, state agencies, members of the general
19 assembly, and other persons regarding the problems and concerns of student loan
20 borrowers and make recommendations for resolving those problems and concerns;

21 (5) Analyze and monitor the development and implementation of federal and state
22 laws and policies relating to student loan borrowers and recommend any changes the office
23 of the student loan ombudsman deems necessary;

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

26 (7) Disseminate information concerning the availability of the office of the student
27 loan ombudsman to assist student loan borrowers and potential student loan borrowers,
28 as well as public institutions of higher education, student loan servicers, and any other
29 participant in student education loan lending, with any student loan servicing concerns;
30 and

31 (8) Take any other actions necessary to fulfill the duties of the office of the student
32 loan ombudsman as set forth in this section.

173.2302. On or before October 1, 2018, the office of the student loan ombudsman,
2 in consultation with the coordinating board for higher education, shall establish and
3 maintain a student loan borrower education course that shall include educational
4 presentations and materials regarding student education loans. Topics covered by the
5 program shall include key loan terms, documentation requirements, monthly payment
6 obligations, income-based repayment options, loan forgiveness, and disclosure
7 requirements.

173.2304. On or before January 1, 2019, and annually thereafter, the commissioner
2 of higher education shall submit a report to the joint committee on education. The report
3 shall address the following:

- 4 (1) The implementation of sections 173.2300 to 173.2326;
- 5 (2) The overall effectiveness of the office of the student loan ombudsman; and
- 6 (3) Additional steps that need to be taken for the department to gain regulatory
7 control over the licensing and enforcement of student loan servicers.

173.2306. 1. No person shall act as a student loan servicer, directly or indirectly,
2 without first obtaining a license from the department of higher education under section
3 173.2308, unless such person is exempt from licensure under subsection 2 of this section.

4 2. The following persons are exempt from student loan servicer licensing
5 requirements of sections 173.2300 to 173.2326:

- 6 (1) Any bank or credit union; and
- 7 (2) Any wholly owned subsidiary of any bank or credit union.

173.2308. 1. Any person seeking to act within the state of Missouri as a student
2 loan servicer shall make a written application to the department of higher education for
3 an initial license in such form as the department prescribes. Such application shall be
4 accompanied by:

- 5 (1) A financial statement prepared by a certified public accountant or a public
6 accountant, the accuracy of which is sworn to under oath before a notary public by the
7 proprietor, a general partner, or a corporate officer or a member duly authorized to
8 execute such documents;
- 9 (2) The history of criminal convictions of the applicant; partners, if the applicant
10 is a partnership; members, if the applicant is a limited liability company or association; or
11 officers, directors, and principal employees, if the applicant is a corporation; and sufficient
12 information pertaining to the history of criminal convictions of such applicant, partners,
13 members, officers, directors, or principal employees as department deems necessary to
14 make the findings under subsection 3 of this section;
- 15 (3) A nonrefundable license fee of one thousand dollars; and

16 **(4) A nonrefundable investigation fee of eight hundred dollars.**

17 **2. In connection with an application for licensing as a student loan servicer, the**
18 **applicant shall furnish to the department information concerning the applicant's identity,**
19 **including fingerprints for submission to the Federal Bureau of Investigation or any federal**
20 **or state governmental agency or entity authorized to receive such information for a state,**
21 **national, and international criminal history records check, as prescribed by the**
22 **department. The applicant shall also submit personal history and experience in a form**
23 **prescribed by the department, including submission of authorization for the department**
24 **to obtain:**

25 **(1) An independent credit report from a consumer reporting agency described in**
26 **§ 603(p) of the Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.); and**

27 **(2) Information related to any administrative, civil, or criminal findings by any**
28 **governmental jurisdiction.**

29 **3. Upon the filing of an application for an initial license and the payment of the fees**
30 **for license and investigation, the department shall investigate the financial condition and**
31 **responsibility, financial and business experience, character, and general fitness of the**
32 **applicant. The department may issue a license if the department finds that:**

33 **(1) The applicant's financial condition is sound;**

34 **(2) The applicant's business will be conducted honestly, fairly, equitably, carefully,**
35 **and efficiently within the purposes and intent of sections 173.2300 to 173.2326;**

36 **(3) If the applicant is an individual, such individual is in all respects properly**
37 **qualified and of good character; if the applicant is a partnership, each partner is in all**
38 **respects properly qualified and of good character; if the applicant is a corporation or**
39 **association, the president, chairman of the executive committee, senior officer responsible**
40 **for the corporation's business, and chief financial officer or any other person who**
41 **performs similar functions, as determined by the department, and each director, each**
42 **trustee, and each shareholder owning ten percent or more of each class of the securities of**
43 **such corporation is in all respects properly qualified and of good character; or if the**
44 **applicant is a limited liability company, each member is in all respects properly qualified**
45 **and of good character;**

46 **(4) No person on behalf of the applicant knowingly has made any incorrect**
47 **statement of a material fact in the application or in any report or statement made under**
48 **sections 173.2300 to 173.2326;**

49 **(5) No person on behalf of the applicant knowingly has omitted to state any**
50 **material fact necessary to give the department any information lawfully required by the**
51 **department;**

52 **(6) The applicant has paid the investigation fee and the license fee required under**
53 **subsection 1 of this section; and**

54 **(7) The applicant has met any other similar requirements as determined by the**
55 **department.**

56 **4. A license issued under this section shall expire at the close of business on**
57 **September thirtieth of the second year following its issuance, unless renewed or earlier**
58 **surrendered, suspended, or revoked under sections 173.2300 to 173.2326. Not later than**
59 **fifteen days after a licensee ceases to engage in the business of student loan servicing in the**
60 **state for any reason, including a business decision to terminate operations in the state,**
61 **license revocation, bankruptcy, or voluntary dissolution, the licensee shall provide written**
62 **notice of surrender to the department and shall surrender to the department its license for**
63 **each location in which the licensee has ceased to engage in such business. The written**
64 **notice of surrender shall identify the location where the records of the licensee will be**
65 **stored and the name, address, and telephone number of an individual authorized to**
66 **provide access to the records. The surrender of a license does not reduce or eliminate the**
67 **licensee's civil or criminal liability arising from acts or omissions occurring prior to the**
68 **surrender of the license, including any administrative actions undertaken by the**
69 **department to revoke or suspend a license, assess a civil penalty, order restitution, or**
70 **exercise any other authority provided to the department.**

71 **5. A license may be renewed for the ensuing twenty-four month period upon the**
72 **filing of an application containing all required documents and fees as provided in this**
73 **section. Such renewal application shall be filed on or before September first of the year**
74 **in which the license expires. Any renewal application filed with the department after**
75 **September first shall be accompanied by a one hundred dollar late fee, and any such filing**
76 **shall be deemed to be timely and sufficient. If an application for a renewal license has been**
77 **filed with the department on or before the date the license expires, the license sought to be**
78 **renewed shall continue in full force and effect until the issuance by the department of the**
79 **renewal license applied for or until the department has notified the licensee in writing of**
80 **the department's refusal to issue such renewal license together with the grounds upon**
81 **which such refusal is based. The department may refuse to issue a renewal license on any**
82 **ground on which the department may refuse to issue an initial license.**

83 **6. If the department determines that a check filed to pay a license or renewal fee**
84 **has been dishonored, the department shall automatically suspend the license or the renewal**
85 **license that has been issued but is not yet effective. The department shall give the licensee**
86 **notice of the automatic suspension pending proceedings for revocation or refusal to renew**
87 **and an opportunity for a hearing on such actions in accordance the department's rules.**

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

92 8. The department may deem an application for a license abandoned if the
93 applicant fails to respond to any request for information required under sections 173.2300
94 to 173.2326. The department shall notify the applicant, in writing, that if the applicant
95 fails to submit such information within sixty days after the date on which such request for
96 information was made, the application shall be deemed abandoned. An application filing
97 fee paid prior to the date an application is deemed abandoned under this subsection shall
98 not be refunded. Abandonment of an application under this subsection shall not preclude
99 the applicant from submitting a new application for a license under the provisions of
100 sections 173.2300 to 173.2326.

 173.2310. No person licensed to act within the state as a student loan servicer shall
2 do so under any other name or at any other place of business than that named in the
3 license. Any change of location of a place of business of a licensee shall require prior
4 written notice to the department. Not more than one place of business shall be maintained
5 under the same license, but the department may issue more than one license to the same
6 licensee upon compliance with the provisions of sections 173.2300 to 173.2326 as to each
7 new licensee. A license shall not be transferable or assignable.

 173.2312. 1. Each student loan servicer licensee and persons exempt from licensure
2 under subsection 2 of section 173.2306 shall maintain adequate records of each student
3 education loan transaction for not less than two years following the final payment on such
4 student education loan or the assignment of such student education loan, whichever occurs
5 first, or such longer period as may be required by any other provision of law.

6 2. If requested by the department, each student loan servicer shall make such
7 records available or send such records to the department by registered or certified mail,
8 return receipt requested, or by any express delivery carrier that provides a dated delivery
9 receipt, not later than five business days after requested by the department to do so. Upon
10 request, the department may grant a licensee additional time to make such records
11 available or send the records to the department.

 173.2314. No student loan servicer shall:

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

4 (2) Engage in any unfair or deceptive practice toward any person or misrepresent
5 or omit any material information in connection with the servicing of a student loan,

6 including misrepresenting the amount, nature, or terms of any fee or payment due or
7 claimed to be due on a student loan, the terms and conditions of the loan agreement, or the
8 borrower's obligations under the loan;

9 (3) Obtain property by fraud or misrepresentation;

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

12 (5) Knowingly or recklessly provide inaccurate information to a nationally
13 recognized consumer credit bureau, thereby harming a borrower's creditworthiness;

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

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

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

173.2316. 1. The department of higher education may, as often as it deems
2 necessary, investigate and examine the affairs, business, premises, and records of any loan
3 servicer required to be licensed under sections 173.2300 to 173.2326 insofar as they pertain
4 to any business for which a license is required under sections 173.2300 to 173.2326.
5 Examinations of such loan servicers shall be conducted at least once in each three-year
6 period. In the course of such investigations and examinations, the owners, members,
7 officers, directors, partners, and employees of the loan servicer being investigated or
8 examined shall, upon demand of the person making such investigation or examination,
9 afford full access to all premises, books, records, and information that the person making
10 such investigation or examination deems necessary. For the foregoing purposes, the person
11 making such investigation or examination shall have the authority to administer oaths,
12 examine under oath all the aforementioned persons, and compel the production of papers
13 and objects of all kinds.

14 2. For the purposes of investigating violations or complaints arising under sections
15 173.2300 to 173.2326 or for the purposes of examination, the department may review,
16 investigate, or examine any student loan servicer licensee or person subject to the
17 requirements of sections 173.2300 to 173.2326 as often as necessary in order to carry out

18 the purposes of sections 173.2300 to 173.2326. The department may direct, subpoena, or
19 order the attendance of and examine under oath all persons whose testimony may be
20 required about the student education loan or the business or subject matter of any such
21 examination or investigation and may direct, subpoena, or order such person to produce
22 books, accounts, records, files, and any other documents the department deems relevant
23 to the inquiry.

24 **3. In order to carry out the purposes of this section, the department may:**

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

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

32 **(3) Use, hire, contract, or employ public or privately available analytical systems,**
33 **methods, or software to examine or investigate the student loan servicer licensee or person**
34 **subject to the provisions of sections 173.2300 to 173.2326;**

35 **(4) Accept and rely on examination or investigation reports made by other**
36 **government officials, within or outside of the state; and**

37 **(5) Accept audit reports made by an independent certified public accountant for**
38 **the student loan servicer licensee or person subject to sections 173.2300 to 173.2326 in the**
39 **course of that part of the examination covering the same general subject matter as the**
40 **audit and may incorporate the audit report in the report of examination, report of**
41 **investigation, or other writing of the department.**

42 **4. The authority of this section shall remain in effect, whether such student loan**
43 **servicer licensee or person subject to the provisions of sections 173.2300 to 173.2326 acts**
44 **or claims to act under any licensing or registration law of the state or claims to act without**
45 **such authority.**

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

173.2318. 1. The department may suspend, revoke, or refuse to renew any license
2 **issued under the provisions of sections 173.2300 to 173.2326 if the department finds:**

3 **(1) Any ground for denial of a license under sections 173.2300 to 173.2326;**

4 **(2) Any violation of the provisions of sections 173.2300 to 173.2326, or regulations**
5 **adopted by the department pursuant thereto, or a violation of any other law or regulation**
6 **applicable to the conduct of the student loan servicer's business;**

7 **(3) A course of conduct consisting of the failure to perform written agreements with**
8 **student loan borrowers;**

9 **(4) Failure to account for funds received or disbursed to the satisfaction of the**
10 **person supplying or receiving student loan funds;**

11 **(5) Conviction of a felony or misdemeanor involving fraud, misrepresentation, or**
12 **deceit;**

13 **(6) Entry of a judgment against the licensee involving fraud, misrepresentation, or**
14 **deceit;**

15 **(7) Entry of a federal or state administrative order against the student loan servicer**
16 **for violation of any law or any regulation applicable to the conduct of the student loan**
17 **servicer's business;**

18 **(8) Refusal to permit an investigation or examination by the department;**

19 **(9) Failure to pay any fee or assessment imposed by sections 173.2300 to 173.2326;**
20 **or**

21 **(10) Failure to comply with any order of the department.**

22 **2. For the purposes of this section, acts of any officer, director, member, partner,**
23 **or principal shall be deemed acts of the student loan servicer.**

24 **3. No abatement of the license fee shall be made if a license issued under sections**
25 **173.2300 to 173.2326 is surrendered, revoked, or suspended prior to the expiration of the**
26 **period for which it was issued.**

173.2322. 1. If the department determines that any student loan servicer required
2 **to be licensed under sections 173.2300 to 173.2326 has violated any provision of such**
3 **sections or any regulation adopted pursuant thereto, the department may, upon twenty-one**
4 **days' notice in writing, order such person to cease and desist from such practices and to**
5 **comply with the provisions of sections 173.2300 to 173.2326. The notice shall be sent by**
6 **certified mail to the principal place of business of the student loan servicer and shall state**
7 **the grounds for the contemplated action.**

8 **2. Within fourteen days of mailing the notice, the person named therein may file**
9 **with the department a written request for a hearing. If a hearing is requested, the**
10 **department shall not issue a cease and desist order except based upon findings made at the**
11 **hearing. The hearing shall be conducted in accordance with the provisions of chapter 506.**
12 **The department may enforce compliance with any such order issued under this section by**

13 **imposition and collection of such fines and penalties as may be prescribed by department**
14 **regulations.**

173.2324. A student loan servicer shall comply with all applicable federal laws and
2 **regulations relating to student loan servicing including, but not limited to, the**
3 **Truth-in-Lending Act, 15 U.S.C. § 1601, et seq., as amended, and regulations promulgated**
4 **thereunder. In addition to any other remedies provided by law, a violation of any such**
5 **federal law or regulation shall be deemed a violation of sections 173.2300 to 173.2326 and**
6 **a basis upon which the department may take enforcement action under sections 173.2318**
7 **or 173.2322.**

173.2326. The department of higher education may promulgate all necessary rules
2 **and regulations for the administration of this section. Any rule or portion of a rule, as that**
3 **term is defined in section 536.010, that is created under the authority delegated in this**
4 **section shall become effective only if it complies with and is subject to all of the provisions**
5 **of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are**
6 **nonseverable, and if any of the powers vested with the general assembly pursuant to**
7 **chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are**
8 **subsequently held unconstitutional, then the grant of rulemaking authority and any rule**
9 **proposed or adopted after August 28, 2018, shall be invalid and void.**

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