



Sen. Daniel Biss

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1 AMENDMENT TO SENATE BILL 1351

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1351, AS AMENDED,  
3 by replacing everything after the enacting clause with the  
4 following:

5 "ARTICLE 1. GENERAL PROVISIONS

6 "Section 1-1. Short title. This Act may be cited as the  
7 Student Loan Servicing Rights Act.

8 Section 1-5. Definitions. As used in this Act:

9 "Applicant" means a person applying for a license pursuant  
10 to this Act.

11 "Borrower" or "student loan borrower" means a person who  
12 has received or agreed to pay a student loan for his or her own  
13 educational expenses.

14 "Cosigner" means a person who has agreed to share  
15 responsibility for repaying a student loan with a borrower.

1 "Department" means the Department of Financial and  
2 Professional Regulation.

3 "Division of Financial Institutions" means the Division of  
4 Financial Institutions of the Department of Financial and  
5 Professional Regulation.

6 "Federal loan borrower eligible for referral to a repayment  
7 specialist" means a borrower who possesses any of the following  
8 characteristics:

9 (1) requests information related to options to reduce  
10 or suspend his or her monthly payment;

11 (2) indicates that he or she is experiencing or  
12 anticipates experiencing financial hardship, distress, or  
13 difficulty making his or her payments;

14 (3) has missed 2 consecutive monthly payments;

15 (4) is at least 75 days delinquent;

16 (5) is enrolled in a discretionary forbearance for more  
17 than 9 of the previous 12 months;

18 (6) has rehabilitated or consolidated one or more loans  
19 out of default within the past 12 months; or

20 (7) has not completed a course of study, as reflected  
21 in the servicer's records, or the borrower identifies  
22 himself or herself as not having completed a program of  
23 study.

24 "Federal education loan" means any loan made, guaranteed,  
25 or insured under Title IV of the federal Higher Education Act  
26 of 1965.

1 "Income-driven payment plan certification" means the  
2 documentation related to a federal student loan borrower's  
3 income or financial status the borrower must submit to renew an  
4 income-driven repayment plan.

5 "Income-driven repayment options" includes the  
6 Income-Contingent Repayment Plan, the Income-Based Repayment  
7 Plan, the Income-Sensitive Repayment Plan, the Pay As You Earn  
8 Plan, the Revised Pay As You Earn Plan, and any other federal  
9 student loan repayment plan that is calculated based on a  
10 borrower's income.

11 "Licensee" means a person licensed pursuant to this Act.

12 "Other repayment plans" means the Standard Repayment Plan,  
13 the Graduated Repayment Plan, the Extended Repayment Plan, or  
14 any other federal student loan repayment plan not based on a  
15 borrower's income.

16 "Private education loan" has the meaning given to that term  
17 in 15 U.S.C. 1650.

18 "Private loan borrower eligible for referral to a repayment  
19 specialist" means a borrower who possesses any of the following  
20 characteristics:

21 (1) requests information related to options to reduce  
22 or suspend his or her monthly payments; or

23 (2) indicates that he or she is experiencing or  
24 anticipates experiencing financial hardship, distress, or  
25 difficulty making his or her payments.

26 "Requester" means any borrower or cosigner that submits a

1 request for assistance.

2 "Request for assistance" means all inquiries, complaints,  
3 account disputes, and requests for documentation a servicer  
4 receives from borrowers or cosigners.

5 "Secretary" means the Secretary of Financial and  
6 Professional Regulation, or his or her designee, including the  
7 Director of the Division of Banking of the Department of  
8 Financial and Professional Regulation.

9 "Servicing" means any of the following activities related  
10 to a student loan of a borrower or cosigner:

11 (1) receiving any scheduled periodic payments from a  
12 borrower or cosigner or any notification that a borrower or  
13 cosigner made a scheduled periodic payment;

14 (2) applying payments to the borrower's account  
15 pursuant to the terms of the student loan or the contract  
16 governing the servicing;

17 (3) during a period when no payment is required on a  
18 student loan, performing both of the following:

19 (A) maintaining account records for the student  
20 loan; and

21 (B) communicating with the borrower or cosigner  
22 regarding the student loan on behalf of the owner of  
23 the student loan promissory note; or

24 (4) interacting with a borrower or cosigner related to  
25 that borrower's student loan with the goal of helping the  
26 borrower avoid default on his or her student loan or

1           facilitating the activities described in paragraph (1) or  
2           (2).

3           "Student loan" or "loan" means any federal education loan,  
4 private education loan, or other loan primarily for use to  
5 finance a postsecondary education and costs of attendance at a  
6 postsecondary institution, including, but not limited to,  
7 tuition, fees, books and supplies, room and board,  
8 transportation, and miscellaneous personal expenses. "Student  
9 loan" includes a loan made to refinance a student loan.

10          "Student loan servicer" or "servicer" means any person  
11 engaged in the business of servicing student loans.

12                           ARTICLE 5. STUDENT LOAN BILL OF RIGHTS

13           Section 5-5. General provisions.

14           (a) A servicer shall not engage in any unfair or deceptive  
15 practice toward any borrower or cosigner or misrepresent or  
16 omit any material information in connection with the servicing  
17 of a student loan, including, but not limited to,  
18 misrepresenting the amount, nature, or terms of any fee or  
19 payment due or claimed to be due on a student loan, the terms  
20 and conditions of the student loan agreement, or the borrower's  
21 or cosigner's obligations under the student loan or the terms  
22 of any repayment plans.

23           (b) A servicer shall not misapply payments made by a  
24 borrower to the outstanding balance of a student loan.

1 (c) A servicer shall oversee third parties, including  
2 subservicers, debt collectors, independent contractors,  
3 subsidiaries, affiliates, or other agents, to ensure that those  
4 companies comply with this Article 5.

5 Section 5-10. Payment processing.

6 (a) A servicer shall credit borrower and cosigner payments  
7 promptly and accurately.

8 (b) A servicer shall provide borrowers and cosigners no  
9 less than 45 days' notice if the servicer changes the address  
10 to which the borrower or cosigner needs to send payments.

11 (c) A servicer shall not charge a penalty to a borrower or  
12 cosigner if a student loan payment is received at an address  
13 used for payments for a period of 90 days after the change in  
14 address.

15 (d) A servicer shall not misrepresent the delinquent amount  
16 of the loan on any call with a borrower or cosigner.

17 (e) A servicer shall allow a borrower or cosigner to  
18 specify instructions as to how an overpayment should be applied  
19 to the balance of the loan as consistent with the promissory  
20 note.

21 Section 5-15. Fees.

22 (a) A servicer may only charge late fees that are  
23 reasonable and proportional to the cost it incurs related to a  
24 late payment.

1           (b) A servicer shall not charge a borrower or cosigner any  
2 fee to modify, defer, forbear, renew, extend, or amend the  
3 borrower's or cosigner's loan.

4           Section 5-20. Billing statements.

5           (a) In any student loan billing statement, a servicer shall  
6 not misrepresent the:

7                   (1) fees assessed;

8                   (2) total amount due for each loan;

9                   (3) payment due date;

10                   (4) date to avoid late fees;

11                   (5) accrued interest during the billing cycle;

12                   (6) default payment methodology;

13                   (7) means to provide instructions for a payment; or

14                   (8) procedure regarding escalated requests for  
15 assistance.

16           (b) A servicer shall not misrepresent information  
17 regarding the \$0 bill and advancement of the due date on any  
18 billing statement that reflects \$0 owed.

19           Section 5-25. Payment histories. A servicer shall provide a  
20 written payment history to a borrower or cosigner upon request  
21 at no cost within 21 calendar days of receiving the request.

22           Section 5-30. Specialized assistance for student loan  
23 borrowers.

1           (a) A servicer shall specially designate servicing and  
2 collections personnel deemed repayment specialists who have  
3 received enhanced training related to repayment options.

4           (b) A servicer shall refrain from presenting forbearance as  
5 the sole or first repayment option to a student loan borrower  
6 struggling with repayment unless the servicer has determined  
7 that, based on the borrower's financial status, a short term  
8 forbearance is appropriate.

9           (c) All inbound and outbound calls from a federal loan  
10 borrower eligible for referral to a repayment specialist and a  
11 private loan borrower eligible for referral to a repayment  
12 specialist shall be routed to a repayment specialist.

13           (d) During each inbound or outbound communication with an  
14 eligible federal loan borrower, a repayment specialist shall  
15 first inform a federal loan borrower eligible for referral to a  
16 repayment specialist that federal income-driven repayment  
17 plans that can reduce the borrower's monthly payment may be  
18 available, discuss such plans, and assist the borrower in  
19 determining whether a particular repayment plan may be  
20 appropriate for the borrower.

21           (e) A repayment specialist shall assess the long-term and  
22 short-term financial situation and needs of a federal loan  
23 borrower eligible for referral to a repayment specialist and  
24 consider any available specific information from the borrower  
25 as necessary to assist the borrower in determining whether a  
26 particular income-driven repayment option may be available to



1 the borrower.

2 (f) In each discussion with a federal loan borrower  
3 eligible for referral to a repayment specialist, a repayment  
4 specialist shall present and explain the following options, as  
5 appropriate:

6 (1) total and permanent disability discharge, public  
7 service loan forgiveness, closed school discharge, and  
8 defenses to repayment;

9 (2) other repayment plans;

10 (3) deferment; and

11 (4) forbearance.

12 (g) A repayment specialist shall assess the long-term and  
13 short-term financial situation and needs of a private loan  
14 borrower eligible for referral to a repayment specialist in  
15 determining whether any private loan repayment options may be  
16 appropriate for the borrower.

17 (h) A servicer shall present and explain all private loan  
18 repayment options, including alternative repayment  
19 arrangements applicable to private student loan borrowers.

20 (i) A servicer shall be prohibited from implementing any  
21 compensation plan that has the intended or actual effect of  
22 incentivizing a repayment specialist to violate this Act or any  
23 other measure that encourages undue haste or lack of quality.

24 (j) The requirements of this Section shall not apply if a  
25 repayment specialist has already conversed with a borrower  
26 consistent with the requirements of this Section.

1           Section 5-35. Disclosures related to discharge and  
2           cancellation. If a servicer is aware that a student loan  
3           borrower attended a school the United States Department of  
4           Education has made findings supporting a defense to repayment  
5           claim or closed school discharge, or that a borrower may be  
6           eligible to have his or her loans forgiven under a total and  
7           permanent disability discharge program, the servicer's  
8           personnel shall disclose information related to the Department  
9           of Education's procedure for asserting a defense to repayment  
10          claim, closed school discharge, or submitting an application  
11          for a total and permanent disability discharge.

12          Section 5-40. Income-driven repayment plan certifications.  
13          A servicer shall disclose the date that a borrower's  
14          income-driven payment plan certification will expire and the  
15          consequences to the borrower for failing to recertify by the  
16          date, including the new repayment amount.

17          Section 5-45. Information to be provided to private  
18          education loan borrowers.

19               (a) A servicer shall provide on its website a description  
20               of any alternative repayment plan offered by the servicer for  
21               private education loans.

22               (b) A servicer shall establish policies and procedures and  
23               implement them consistently in order to facilitate evaluation

1 of private student loan alternative repayment arrangement  
2 requests, including providing accurate information regarding  
3 any private student loan alternative repayment arrangements  
4 that may be available to the borrower through the promissory  
5 note or that may have been marketed to the borrower through  
6 marketing materials.

7 A private student loan alternative repayment arrangements  
8 shall consider the affordability of repayment plans for a  
9 distressed borrower, as well as investor, guarantor, and  
10 insurer guidelines and previous outcome and performance  
11 information.

12 (c) If a servicer offers private student loan repayment  
13 arrangements, a servicer shall consistently present and offer  
14 those arrangements to borrowers with similar financial  
15 circumstances.

16 Section 5-50. Cosigner release. A servicer shall provide  
17 information on billing statements and its website concerning  
18 the availability and criteria for a cosigner release.

19 Section 5-55. Payoff statements. A servicer shall indicate  
20 on its billing statements and website that a borrower may  
21 request a payoff statement. A servicer shall provide the payoff  
22 statement within 10 days, including information the requester  
23 needs to pay off the loan. If a payoff is made, the servicer  
24 must send a paid-in-full notice within 30 days.

1           Section 5-60. Requirements related to the transfer of  
2 servicing.

3           (a) When acting as the transferor servicer, a servicer  
4 shall provide to each borrower subject to the transfer a  
5 written notice not less than 15 calendar days before the  
6 effective date of the transfer. The transferee servicer and  
7 transferor servicer may provide a single notice, in which case  
8 the notice shall be provided not less than 15 calendar days  
9 before the effective date of the transfer. The notice by the  
10 transferor servicer or, if applicable, the combined notice of  
11 transfer shall contain the following information:

12                   (1) the effective date of the transfer of servicing;

13                   (2) the name, address, and toll-free telephone number  
14 for the transferor servicer's designated point of contact  
15 that can be contacted by the borrower to obtain answers to  
16 servicing inquiries;

17                   (3) the name, address, and toll-free telephone number  
18 for the transferee servicer's designated point of contact  
19 that can be contacted by the borrower to obtain answers to  
20 servicing inquiries;

21                   (4) the date on which the transferor servicer will  
22 cease to accept payments relating to the loan and the date  
23 on which the transferee servicer will begin to accept such  
24 payments; the dates shall either be the same or consecutive  
25 days;

1           (5) a statement that the transfer of servicing does not  
2 affect any term or condition of the loan other than terms  
3 directly related to the servicing of a loan;

4           (6) information on whether the borrower's  
5 authorization for recurring electronic fund transfers, if  
6 applicable, will be transferred to the transferee  
7 servicer; if any such recurring electronic funds transfers  
8 cannot be transferred, the transferee servicer shall  
9 provide information explaining how the borrower may  
10 establish new recurring electronic funds transfers with  
11 the transferee servicer; and

12           (7) a statement of the current loan balance, including  
13 the current unpaid amount of principal, interest, and fees.

14           (b) When acting as the transferee servicer, a servicer  
15 shall provide to each borrower subject to the transfer a  
16 written notice not more than 15 calendar days after the  
17 effective date of the transfer. The transferee servicer and  
18 transferor servicer may provide a combined notice of transfer,  
19 in which case the notice shall be provided not less than 15  
20 days before the effective date of the transfer. The notice by  
21 the transferee servicer or, if applicable, the combined notice  
22 of transfer shall contain the following information:

23           (1) the effective date of the transfer of servicing;

24           (2) the name, address, and toll-free telephone number  
25 for the transferee servicer's designated point of contact  
26 that can be contacted by the borrower to obtain answers to

1 servicing inquiries;

2 (3) the date on which the transferor servicer will  
3 cease to accept payments relating to the loan and the date  
4 on which the transferee servicer will begin to accept such  
5 payments; the dates shall either be the same or consecutive  
6 days;

7 (4) a statement that the transfer of servicing does not  
8 affect any term or condition of the student loan other than  
9 terms directly related to the servicing of a loan;

10 (5) information on whether the borrower's  
11 authorization for recurring electronic fund transfers, if  
12 applicable, will be transferred to the transferee  
13 servicer; if any such recurring electronic funds transfers  
14 cannot be transferred, the transferee servicer shall  
15 provide information explaining how the borrower may  
16 establish new recurring electronic funds transfers with  
17 the transferee servicer; and

18 (6) a statement of the current loan balance, including  
19 the current unpaid amount of principal, interest, and fees.

20 (c) During the 60 calendar day period beginning on the  
21 effective date of transfer of the servicing of any loan, a  
22 payment timely made to the transferor servicer may not be  
23 treated as late for any purpose by the transferee servicer,  
24 including the assessment of late fees, accrual of additional  
25 interest, and furnishing negative credit information.

26 (d) To the extent practicable, for at least 120 calendar

1 days beginning on the effective date of transfer of servicing  
2 of any loan, when acting as the transferor servicer, a servicer  
3 shall promptly transfer payments received to the transferee  
4 servicer for application to the borrower's loan account.

5 (e) Unless a borrower's authorizations for recurring  
6 electronic fund transfers are automatically transferred to the  
7 transferee servicer, when acting as transferee servicer, a  
8 servicer shall make available to a borrower whose loan  
9 servicing is transferred an online process through which a  
10 borrower may make a new authorization for recurring electronic  
11 fund transfers. A servicer shall also provide a process through  
12 which the borrower may make a new authorization for recurring  
13 electronic funds transfers by phone or through written  
14 approval.

15 Section 5-65. Requests for assistance; account dispute  
16 resolution; appeals.

17 (a) A servicer shall implement reasonable policies and  
18 procedures for accepting, processing, investigating, and  
19 responding to requests for assistance in a timely and effective  
20 manner, including, but not limited to, the following  
21 requirements:

22 (1) A servicer shall provide readily accessible  
23 methods for consumers to submit a request for assistance to  
24 the servicer, including such methods as phone, email, and  
25 U.S. mail.

1           (2) A servicer shall post on its website and disclose  
2 on its billing statements:

3           (A) the toll-free telephone number, email address,  
4 and mailing address for consumers to submit a requests  
5 for assistance to the servicer; and

6           (B) the procedures for a requester to send a  
7 written communication to the servicer regarding any  
8 request for assistance.

9           (3) For any request for assistance that includes a  
10 request for documentation or information, where a response  
11 cannot be immediately provided, a servicer shall provide  
12 the requested documentation or information to the  
13 requester within 14 calendar days of the request; if a  
14 servicer determines in good faith that it is unable to  
15 provide the documentation or information within 14  
16 calendar days, promptly after making the determination,  
17 the servicer shall notify the requester of the expected  
18 response period, which must be reasonable for the request  
19 for assistance.

20           (b) A servicer shall implement a process by which a  
21 requester can escalate any request for assistance. Such process  
22 shall allow a requester who has made a request for assistance  
23 on the phone and who receives a response during the call to  
24 obtain immediate review of the response by an employee of the  
25 servicer at a higher supervisory level.

26           (c) The following requirements shall apply when a requester



1 submits a written or oral request for assistance which contains  
2 an account dispute to a servicer:

3 (1) Within 14 calendar days after its receipt of the  
4 written communication or oral request for further  
5 escalation, a servicer shall attempt to make contact,  
6 including providing the requester with name and contact  
7 information of the representative handling the account  
8 dispute, by phone or in writing, to the requester and  
9 document such attempt in the borrower's account.

10 (2) A servicer shall complete the following actions  
11 within 30 calendar days of its receipt of the written  
12 communication or oral request for further escalation,  
13 subject to paragraph (3) of this subsection:

14 (A) conduct a thorough investigation of the  
15 account dispute;

16 (B) make all appropriate corrections to the  
17 account of the requester, including crediting any late  
18 fees assessed and derogatory credit furnishing as the  
19 result of any error, and, if any corrections are made,  
20 sending the requester a written notification that  
21 includes the following information:

22 (i) an explanation of the correction or  
23 corrections to the requester's account that have  
24 been made; and

25 (ii) the toll-free telephone number, email  
26 address, and mailing address of the servicer's

1           personnel knowledgeable about the investigation  
2           and resolution of the account dispute.

3           (3) If a servicer determines in good faith that it  
4 cannot complete a thorough investigation of the account  
5 dispute within 30 calendar days after receiving the written  
6 communication or oral request for further escalation  
7 regarding the account dispute, then, promptly after making  
8 the determination, the servicer shall notify the requester  
9 of the expected resolution time period, which must be  
10 reasonable for the account dispute. A servicer must  
11 complete the actions listed in the investigation and  
12 resolution of account dispute within this time period.

13           (4) If a servicer determines as a result of its  
14 investigation that the requested changes to a requester's  
15 dispute will not be made, the servicer shall provide the  
16 requester with a written notification that includes the  
17 following information:

18           (A) a description of its determination and an  
19 explanation of the reasons for that determination;

20           (B) the toll-free telephone number, email address,  
21 and mailing address of the servicer's personnel  
22 knowledgeable about the investigation and resolution  
23 of the account dispute;

24           (C) instructions about how the requester can  
25 appeal the servicer's determination in accordance with  
26 paragraph (5) of this subsection; and

1 (D) information regarding the method by which a  
2 borrower may request copies of documents a servicer  
3 relied on to make a determination that no changes to a  
4 requester's account will be made.

5 (5) After the requester receives a determination  
6 regarding an account dispute in accordance with paragraph  
7 (4) of this subsection, the servicer shall allow a process  
8 by which the requester can appeal, in writing, the  
9 determination. The appeals process shall include:

10 (A) a written acknowledgment notifying the  
11 requester that the servicer has commenced the appeals  
12 process; such acknowledgment shall be sent within 14  
13 calendar days after receiving a written request for  
14 appeal from the requester;

15 (B) an independent reassessment of the servicer's  
16 determination regarding the account dispute, performed  
17 by another employee of the servicer at an equal or  
18 higher supervisory level than the employee or  
19 employees involved in the initial account dispute  
20 determination;

21 (C) investigation and resolution of appeals within  
22 30 calendar days after a servicer's commencement of the  
23 appeals process; and

24 (D) notification sent to the requester, in  
25 writing, documenting the outcome of the appeal,  
26 including any reason for denial.

1 (d) While a requester has a pending account dispute,  
2 including any applicable appeal, a servicer shall take  
3 reasonable steps to:

4 (1) prevent negative credit reporting with respect to  
5 the borrower's or cosigner's account while the dispute is  
6 under review; and

7 (2) suspend all collection activities on the account  
8 while the account dispute is being researched or resolved,  
9 if the account dispute is related to the delinquency.

10 ARTICLE 10. STUDENT LOAN OMBUDSMAN

11 Section 10-5. Student Loan Ombudsman.

12 (a) The position of Student Loan Ombudsman is created  
13 within the Office of the Attorney General to provide timely  
14 assistance to student loan borrowers.

15 (b) The Student Loan Ombudsman, in consultation with the  
16 Secretary, shall:

17 (1) receive, review, and attempt to resolve any  
18 complaints from student loan borrowers, including, but not  
19 limited to, attempts to resolve complaints in  
20 collaboration with institutions of higher education,  
21 student loan servicers, and any other participants in  
22 student loan lending;

23 (2) compile and analyze data on student loan borrower  
24 complaints;

1           (3) assist student loan borrowers to understand their  
2 rights and responsibilities under the terms of student  
3 education loans;

4           (4) provide information to the public, agencies,  
5 legislators, and others regarding the problems and  
6 concerns of student loan borrowers and make  
7 recommendations for resolving those problems and concerns;

8           (5) analyze and monitor the development and  
9 implementation of federal, State, and local laws,  
10 regulations, and policies relating to student loan  
11 borrowers and recommend any changes the Student Loan  
12 Ombudsman deems necessary;

13           (6) review the complete student education loan history  
14 for any student loan borrower who has provided written  
15 consent for such review;

16           (7) disseminate information concerning the  
17 availability of the Student Loan Ombudsman to assist  
18 student loan borrowers and potential student loan  
19 borrowers, as well as public institutions of higher  
20 education, student loan servicers, and any other  
21 participant in student education loan lending, with any  
22 student loan servicing concerns; and

23           (8) take any other actions necessary to fulfill the  
24 duties of the Student Loan Ombudsman as set forth in this  
25 subsection.

## 1 ARTICLE 15. LICENSURE

2 Section 15-5. Scope; requirement for student loan  
3 servicing license.

4 (a) It shall be unlawful for any person to operate as a  
5 student loan servicer in Illinois except as authorized by this  
6 Act and without first having obtained a license in accordance  
7 with this Act.

8 (b) The provisions of this Act do not apply to any of the  
9 following:

10 (1) a bank, out-of-state bank, Illinois credit union,  
11 federal credit union, or out-of-state credit union;

12 (2) a wholly owned subsidiary of any such bank or  
13 credit union;

14 (3) an operating subsidiary where each owner of the  
15 operating subsidiary is wholly owned by the same bank or  
16 credit union;

17 (4) the Illinois Student Assistance Commission;

18 (5) a public postsecondary educational institution or  
19 a private nonprofit postsecondary educational institution  
20 servicing a student loan it extended to the borrower;

21 (6) a licensed debt management service under the Debt  
22 Management Service Act, except to the extent that the  
23 organization acts as a subcontractor, affiliate, or  
24 service provider for an entity that is otherwise subject to  
25 licensure under this Act; or

1           (7) any collection agency licensed under the  
2           Collection Agency Act that is collecting post-default  
3           debt.

4           Section 15-10. Licensee name.

5           (a) No person, partnership, association, corporation,  
6           limited liability company, or other entity engaged in the  
7           business regulated by this Act shall operate such business  
8           under a name other than the real names of the entity and  
9           individuals conducting such business. Such business may in  
10          addition operate under an assumed corporate name pursuant to  
11          the Business Corporation Act of 1983, an assumed limited  
12          liability company name pursuant to the Limited Liability  
13          Company Act, or an assumed business name pursuant to the  
14          Assumed Business Name Act.

15          (b) A knowing violation of this Section constitutes an  
16          unlawful practice within the meaning of this Act and, in  
17          addition to the administrative relief available under this Act,  
18          may be prosecuted for the commission of a Class A misdemeanor.  
19          A person who is convicted of a second or subsequent violation  
20          of this Section is guilty of a Class 4 felony.

21          Section 15-15. Application process; investigation; fees.

22          (a) The Secretary shall issue a license upon completion of  
23          all of the following:

24                 (1) the filing of an application for license with the

1 Secretary or the Nationwide Mortgage Licensing System and  
2 Registry as approved by the Secretary;

3 (2) the filing with the Secretary of a listing of  
4 judgments entered against, and bankruptcy petitions by,  
5 the license applicant for the preceding 10 years;

6 (3) the payment, in certified funds, of investigation  
7 and application fees, the total of which shall be in an  
8 amount equal to \$1,000 for an initial application and \$800  
9 for a background investigation;

10 (4) the filing of an audited balance sheet, including  
11 all footnotes prepared by a certified public accountant in  
12 accordance with generally accepted accounting principles  
13 and generally accepted auditing standards; notwithstanding  
14 the requirements of this subsection, an applicant that is a  
15 subsidiary may submit audited consolidated financial  
16 statements of its parent, intermediary parent, or ultimate  
17 parent as long as the consolidated statements are supported  
18 by consolidating statements that include the applicant's  
19 financial statement; if the consolidating statements are  
20 unaudited, the applicant's chief financial officer shall  
21 attest to the applicant's financial statements disclosed  
22 in the consolidating statements; and

23 (5) an investigation of the averments required by  
24 Section 15-30, which investigation must allow the  
25 Secretary to issue positive findings stating that the  
26 financial responsibility, experience, character, and



1           general fitness of the license applicant and of the members  
2           thereof if the license applicant is a partnership or  
3           association, of the officers and directors thereof if the  
4           license applicant is a corporation, and of the managers and  
5           members that retain any authority or responsibility under  
6           the operating agreement if the license applicant is a  
7           limited liability company are such as to command the  
8           confidence of the community and to warrant belief that the  
9           business will be operated honestly, fairly, and  
10          efficiently within the purpose of this Act; if the  
11          Secretary does not so find, he or she shall not issue the  
12          license, and he or she shall notify the license applicant  
13          of the denial.

14          The Secretary may impose conditions on a license if the  
15          Secretary determines that those conditions are necessary or  
16          appropriate. These conditions shall be imposed in writing and  
17          shall continue in effect for the period prescribed by the  
18          Secretary.

19          (b) All licenses shall be issued to the license applicant.  
20          Upon receipt of the license, a student loan servicing licensee  
21          shall be authorized to engage in the business regulated by this  
22          Act. The license shall remain in full force and effect until it  
23          expires without renewal, is surrendered by the licensee, or  
24          revoked or suspended as hereinafter provided.

25          Section 15-20. Application form.

1           (a) Application for a student loan servicer license must be  
2 made in accordance with Section 15-40 and, if applicable, in  
3 accordance with requirements of the Nationwide Mortgage  
4 Licensing System and Registry. The application shall be in  
5 writing, under oath, and on a form obtained from and prescribed  
6 by the Secretary, or may be submitted electronically, with  
7 attestation, to the Nationwide Mortgage Licensing System and  
8 Registry.

9           (b) The application shall contain the name and complete  
10 business and residential address or addresses of the license  
11 applicant. If the license applicant is a partnership,  
12 association, corporation, or other form of business  
13 organization, the application shall contain the names and  
14 complete business and residential addresses of each member,  
15 director, and principal officer thereof. The application shall  
16 also include a description of the activities of the license  
17 applicant in such detail and for such periods as the Secretary  
18 may require, including all of the following:

19           (1) an affirmation of financial solvency noting such  
20 capitalization requirements as may be required by the  
21 Secretary and access to such credit as may be required by  
22 the Secretary;

23           (2) an affirmation that the license applicant or its  
24 members, directors, or principals, as may be appropriate,  
25 are at least 18 years of age;

26           (3) information as to the character, fitness,

1 financial and business responsibility, background,  
2 experience, and criminal record of any (i) person, entity,  
3 or ultimate equitable owner that owns or controls, directly  
4 or indirectly, 10% or more of any class of stock of the  
5 license applicant; (ii) person, entity, or ultimate  
6 equitable owner that is not a depository institution, as  
7 defined in Section 1007.50 of the Savings Bank Act, that  
8 lends, provides, or infuses, directly or indirectly, in any  
9 way, funds to or into a license applicant in an amount  
10 equal to or more than 10% of the license applicant's net  
11 worth; (iii) person, entity, or ultimate equitable owner  
12 that controls, directly or indirectly, the election of 25%  
13 or more of the members of the board of directors of a  
14 license applicant; or (iv) person, entity, or ultimate  
15 equitable owner that the Secretary finds influences  
16 management of the license applicant;

17 (4) upon written request by the licensee and  
18 notwithstanding the provisions of paragraphs (1), (2), and  
19 (3) of this subsection, the Secretary may permit the  
20 licensee to omit all or part of the information required by  
21 those paragraphs if, in lieu of the omitted information,  
22 the licensee submits an affidavit stating that the  
23 information submitted on the licensee's previous renewal  
24 application is still true and accurate; the Secretary may  
25 adopt rules prescribing the form and content of the  
26 affidavit that are necessary to accomplish the purposes of

1           this Section; and

2                   (5) such other information as required by rules of the  
3           Secretary.

4           Section 15-25. Student loan servicer license application  
5           and issuance.

6           (a) Applicants for a license shall apply in a form  
7           prescribed by the Secretary. Each form shall contain content as  
8           set forth by rule, regulation, instruction, or procedure of the  
9           Secretary and may be changed or updated as necessary by the  
10          Secretary in order to carry out the purposes of this Act.

11          (b) In order to fulfill the purposes of this Act, the  
12          Secretary is authorized to establish relationships or  
13          contracts with the Nationwide Mortgage Licensing System and  
14          Registry or other entities designated by the Nationwide  
15          Mortgage Licensing System and Registry to collect and maintain  
16          records and process transaction fees or other fees related to  
17          licensees or other persons subject to this Act.

18          (c) In connection with an application for licensing, the  
19          applicant may be required, at a minimum, to furnish to the  
20          Nationwide Mortgage Licensing System and Registry information  
21          concerning the applicant's identity, including:

22                  (1) fingerprints for submission to the Federal Bureau  
23                  of Investigation or any governmental agency or entity  
24                  authorized to receive such information for a State,  
25                  national, and international criminal history background

1 check; and

2 (2) personal history and experience in a form  
3 prescribed by the Nationwide Mortgage Licensing System and  
4 Registry, including the submission of authorization for  
5 the Nationwide Mortgage Licensing System and Registry and  
6 the Secretary to obtain:

7 (A) an independent credit report obtained from a  
8 consumer reporting agency described in Section 603(p)  
9 of the Fair Credit Reporting Act (15 U.S.C. 1681a(p));  
10 and

11 (B) information related to any administrative,  
12 civil, or criminal findings by any governmental  
13 jurisdiction.

14 (d) For the purposes of this Section, and in order to  
15 reduce the points of contact that the Federal Bureau of  
16 Investigation may have to maintain for purposes of subsection  
17 (c) of this Section, the Secretary may use the Nationwide  
18 Mortgage Licensing System and Registry as a channeling agent  
19 for requesting information from and distributing information  
20 to the federal Department of Justice or any governmental  
21 agency.

22 (e) For the purposes of this Section, and in order to  
23 reduce the points of contact that the Secretary may have to  
24 maintain for purposes of paragraph (2) of subsection (c) of  
25 this Section, the Secretary may use the Nationwide Mortgage  
26 Licensing System and Registry as a channeling agent for

1 requesting and distributing information to and from any source  
2 as directed by the Secretary.

3 Section 15-30. Averments of licensee. Each application for  
4 license shall be accompanied by the following averments stating  
5 that the applicant:

6 (1) will file with the Secretary or Nationwide Mortgage  
7 Licensing System and Registry, as applicable, when due, any  
8 report or reports that it is required to file under any of  
9 the provisions of this Act;

10 (2) has not committed a crime against the law of this  
11 State, any other state, or of the United States involving  
12 moral turpitude or fraudulent or dishonest dealing, and  
13 that no final judgment has been entered against it in a  
14 civil action upon grounds of fraud, misrepresentation, or  
15 deceit that has not been previously reported to the  
16 Secretary;

17 (3) has not engaged in any conduct that would be cause  
18 for denial of a license;

19 (4) has not become insolvent;

20 (5) has not submitted an application for a license  
21 under this Act that contains a material misstatement;

22 (6) has not demonstrated by course of conduct,  
23 negligence or incompetence in performing any act for which  
24 it is required to hold a license under this Act;

25 (7) will advise the Secretary in writing or the

1 Nationwide Mortgage Licensing System and Registry, as  
2 applicable, of any changes to the information submitted on  
3 the most recent application for license or averments of  
4 record within 30 days of the change; the written notice  
5 must be signed in the same form as the application for the  
6 license being amended;

7 (8) will comply with the provisions of this Act and  
8 with any lawful order, rule, or regulation made or issued  
9 under the provisions of this Act;

10 (9) will submit to periodic examination by the  
11 Secretary as required by this Act; and

12 (10) will advise the Secretary in writing of judgments  
13 entered against and bankruptcy petitions by the license  
14 applicant within 5 days after the occurrence.

15 A licensee who fails to fulfill the obligations of an  
16 averment, fails to comply with averments made, or otherwise  
17 violates any of the averments made under this Section shall be  
18 subject to the penalties of this Act.

19 Section 15-35. Refusal to issue license. The Secretary  
20 shall refuse to issue or renew a license if:

21 (1) it is determined that the applicant is not in  
22 compliance with any provisions of this Act;

23 (2) there is substantial continuity between the  
24 applicant and any violator of this Act; or

25 (3) the Secretary cannot make the findings specified in

1 subsection (a) of Section 15-15 of this Act.

2 Section 15-40. License issuance and renewal; fees.

3 (a) Licenses shall be renewed every year using the common  
4 renewal date of the Nationwide Mortgage Licensing System and  
5 Registry, as adopted by the Secretary. Properly completed  
6 renewal application forms and filing fees may be received by  
7 the Secretary 60 days prior to the license expiration date,  
8 but, to be deemed timely, the completed renewal application  
9 forms and filing fees must be received by the Secretary no  
10 later than 30 days prior to the license expiration date.

11 (b) It shall be the responsibility of each licensee to  
12 accomplish renewal of its license. Failure by a licensee to  
13 submit a properly completed renewal application form and fees  
14 in a timely fashion, absent a written extension from the  
15 Secretary, shall result in the license becoming inactive.

16 (c) No activity regulated by this Act shall be conducted by  
17 the licensee when a license becomes inactive. An inactive  
18 license may be reactivated by the Secretary upon payment of the  
19 renewal fee and payment of a reactivation fee equal to the  
20 renewal fee.

21 (d) A licensee ceasing an activity or activities regulated  
22 by this Act and desiring to no longer be licensed shall so  
23 inform the Secretary in writing and, at the same time, convey  
24 any license issued and all other symbols or indicia of  
25 licensure. The licensee shall include a plan for the withdrawal



1 from regulated business, including a timetable for the  
2 disposition of the business, and comply with the surrender  
3 guidelines or requirements of the Secretary. Upon receipt of  
4 such written notice, the Secretary shall post the cancellation  
5 or issue a certified statement canceling the license.

6 ARTICLE 20. SUPERVISION

7 Section 20-5. Functions; powers; duties. The functions,  
8 powers, and duties of the Secretary shall include the  
9 following:

10 (1) to issue or refuse to issue any license as provided  
11 by this Act;

12 (2) to revoke or suspend for cause any license issued  
13 under this Act;

14 (3) to keep records of all licenses issued under this  
15 Act;

16 (4) to receive, consider, investigate, and act upon  
17 complaints made by any person in connection with any  
18 student loan servicing licensee in this State;

19 (5) to prescribe the forms of and receive:

20 (A) applications for licenses; and

21 (B) all reports and all books and records required  
22 to be made by any licensee under this Act, including  
23 annual audited financial statements and annual reports  
24 of student loan activity;

1           (6) to adopt rules necessary and proper for the  
2 administration of this Act;

3           (7) to subpoena documents and witnesses and compel  
4 their attendance and production, to administer oaths, and  
5 to require the production of any books, papers, or other  
6 materials relevant to any inquiry authorized by this Act;

7           (8) to issue orders against any person if the Secretary  
8 has reasonable cause to believe that an unsafe, unsound, or  
9 unlawful practice has occurred, is occurring, or is about  
10 to occur; if any person has violated, is violating, or is  
11 about to violate any law, rule, or written agreement with  
12 the Secretary; or for the purpose of administering the  
13 provisions of this Act and any rule adopted in accordance  
14 with this Act;

15           (9) to address any inquiries to any licensee, or the  
16 officers thereof, in relation to its activities and  
17 conditions, or any other matter connected with its affairs,  
18 and it shall be the duty of any licensee or person so  
19 addressed to promptly reply in writing to those inquiries;  
20 the Secretary may also require reports from any licensee at  
21 any time the Secretary may deem desirable;

22           (10) to examine the books and records of every licensee  
23 under this Act;

24           (11) to enforce provisions of this Act;

25           (12) to levy fees, fines, and charges for services  
26 performed in administering this Act; the aggregate of all

1 fees collected by the Secretary on and after the effective  
2 date of this Act shall be paid promptly after receipt,  
3 accompanied by a detailed statement thereof, into the Bank  
4 and Trust Company Fund under Section 20-10; the amounts  
5 deposited into that Fund shall be used for the ordinary and  
6 contingent expenses of the Department; nothing in this Act  
7 shall prevent the continuation of the practice of paying  
8 expenses involving salaries, retirement, social security,  
9 and State-paid insurance of State officers by  
10 appropriation from the General Revenue Fund;

11 (13) to appoint examiners, supervisors, experts, and  
12 special assistants as needed to effectively and  
13 efficiently administer this Act;

14 (14) to conduct hearings for the purpose of:

15 (A) appeals of orders of the Secretary;

16 (B) suspensions or revocations of licenses, or  
17 fining of licensees;

18 (C) investigating:

19 (i) complaints against licensees; or

20 (ii) annual gross delinquency rates; and

21 (D) carrying out the purposes of this Act;

22 (15) to exercise exclusive visitorial power over a  
23 licensee unless otherwise authorized by this Act or as  
24 vested in the courts, or upon prior consultation with the  
25 Secretary, a foreign student loan servicing regulator with  
26 an appropriate supervisory interest in the parent or

1 affiliate of a licensee;

2 (16) to enter into cooperative agreements with state  
3 regulatory authorities of other states to provide for  
4 examination of corporate offices or branches of those  
5 states and to accept reports of such examinations;

6 (17) to assign an examiner or examiners to monitor the  
7 affairs of a licensee with whatever frequency the Secretary  
8 determines appropriate and to charge the licensee for  
9 reasonable and necessary expenses of the Secretary if in  
10 the opinion of the Secretary an emergency exists or appears  
11 likely to occur;

12 (18) to impose civil penalties of up to \$50 per day  
13 against a licensee for failing to respond to a regulatory  
14 request or reporting requirement; and

15 (19) to enter into agreements in connection with the  
16 Nationwide Mortgage Licensing System and Registry.

17 Section 20-10. Bank and Trust Company Fund. All moneys  
18 received by the Secretary under this Act in conjunction with  
19 the provisions relating to student loan servicers shall be paid  
20 into and all expenses incurred by the Secretary under this Act  
21 in conjunction with the provisions relating to student loan  
22 servicers shall be paid from the Bank and Trust Company Fund.

23 Section 20-15. Examination; prohibited activities.

24 (a) The business affairs of a licensee under this Act shall

1 be examined for compliance with this Act as often as the  
2 Secretary deems necessary and proper. The Secretary may adopt  
3 rules with respect to the frequency and manner of examination.  
4 The Secretary shall appoint a suitable person to perform such  
5 examination. The Secretary and his or her appointees may  
6 examine the entire books, records, documents, and operations of  
7 each licensee and its subsidiary, affiliate, or agent, and may  
8 examine any of the licensee's or its subsidiary's, affiliate's,  
9 or agent's officers, directors, employees, and agents under  
10 oath.

11 (b) The Secretary shall prepare a sufficiently detailed  
12 report of each licensee's examination, shall issue a copy of  
13 such report to each licensee's principals, officers, or  
14 directors, and shall take appropriate steps to ensure  
15 correction of violations of this Act.

16 (c) Affiliates of a licensee shall be subject to  
17 examination by the Secretary on the same terms as the licensee,  
18 but only when reports from or examination of a licensee  
19 provides for documented evidence of unlawful activity between a  
20 licensee and affiliate benefiting, affecting, or deriving from  
21 the activities regulated by this Act.

22 (d) The expenses of any examination of the licensee and  
23 affiliates shall be borne by the licensee and assessed by the  
24 Secretary as may be established by rule.

25 (e) Upon completion of the examination, the Secretary shall  
26 issue a report to the licensee. All confidential supervisory

1 information, including the examination report and the work  
2 papers of the report, shall belong to the Secretary's office  
3 and may not be disclosed to anyone other than the licensee, law  
4 enforcement officials or other regulatory agencies that have an  
5 appropriate regulatory interest as determined by the  
6 Secretary, or to a party presenting a lawful subpoena to the  
7 Department. The Secretary may, through the Attorney General,  
8 immediately appeal to the court of jurisdiction the disclosure  
9 of such confidential supervisory information and seek a stay of  
10 the subpoena pending the outcome of the appeal. Reports  
11 required of licensees by the Secretary under this Act and  
12 results of examinations performed by the Secretary under this  
13 Act shall be the property of only the Secretary, but may be  
14 shared with the licensee. Access under this Act to the books  
15 and records of each licensee shall be limited to the Secretary  
16 and his or her agents as provided in this Act and to the  
17 licensee and its authorized agents and designees. No other  
18 person shall have access to the books and records of a licensee  
19 under this Act. Any person upon whom a demand for production of  
20 confidential supervisory information is made, whether by  
21 subpoena, order, or other judicial or administrative process,  
22 must withhold production of the confidential supervisory  
23 information and must notify the Secretary of the demand, at  
24 which time the Secretary is authorized to intervene for the  
25 purpose of enforcing the limitations of this Section or seeking  
26 the withdrawal or termination of the attempt to compel

1 production of the confidential supervisory information. The  
2 Secretary may impose any conditions and limitations on the  
3 disclosure of confidential supervisory information that are  
4 necessary to protect the confidentiality of that information.  
5 Except as authorized by the Secretary, no person obtaining  
6 access to confidential supervisory information may make a copy  
7 of the confidential supervisory information. The Secretary may  
8 condition a decision to disclose confidential supervisory  
9 information on entry of a protective order by the court or  
10 administrative tribunal presiding in the particular case or on  
11 a written agreement of confidentiality. In a case in which a  
12 protective order or agreement has already been entered between  
13 parties other than the Secretary, the Secretary may  
14 nevertheless condition approval for release of confidential  
15 supervisory information upon the inclusion of additional or  
16 amended provisions in the protective order. The Secretary may  
17 authorize a party who obtained the records for use in one case  
18 to provide them to another party in another case, subject to  
19 any conditions that the Secretary may impose on either or both  
20 parties. The requester shall promptly notify other parties to a  
21 case of the release of confidential supervisory information  
22 obtained and, upon entry of a protective order, shall provide  
23 copies of confidential supervisory information to the other  
24 parties.

25 (f) The Secretary and employees of the Department shall be  
26 subject to the restrictions provided in Section 2.5 of the

1 Division of Banking Act, including, without limitation, the  
2 restrictions on (i) owning shares of stock or holding any other  
3 equity interest in an entity regulated under this Act or in any  
4 corporation or company that owns or controls an entity  
5 regulated under this Act; (ii) being an officer, director,  
6 employee, or agent of an entity regulated under this Act; and  
7 (iii) obtaining a loan or accepting a gratuity from an entity  
8 regulated under this Act.

9 (g) After the initial examination for those licensees whose  
10 only student loan activity is servicing fewer than 1,000  
11 Illinois student loans, the examination required in subsection  
12 (a) may be waived upon submission of a letter from the  
13 licensee's independent certified auditor that the licensee  
14 serviced fewer than 1,000 Illinois student loans during the  
15 year in which the audit was performed.

16 Section 20-20. Subpoena power of the Secretary.

17 (a) The Secretary shall have the power to issue and to  
18 serve subpoenas and subpoenas duces tecum to compel the  
19 attendance of witnesses and the production of all books,  
20 accounts, records, and other documents and materials relevant  
21 to an examination or investigation. The Secretary, or his or  
22 her duly authorized representative, shall have power to  
23 administer oaths and affirmations to any person.

24 (b) In the event of noncompliance with a subpoena or  
25 subpoena duces tecum issued or caused to be issued by the



1 Secretary, the Secretary may, through the Attorney General,  
2 petition the circuit court of the county in which the person  
3 subpoenaed resides or has its principal place of business for  
4 an order requiring the subpoenaed person to appear and testify  
5 and to produce such books, accounts, records, and other  
6 documents as are specified in the subpoena duces tecum. The  
7 court may grant injunctive relief restraining the person from  
8 advertising, promoting, soliciting, entering into, offering to  
9 enter into, continuing, or completing any student loan  
10 servicing transaction. The court may grant other relief,  
11 including, but not limited to, the restraint, by injunction or  
12 appointment of a receiver, of any transfer, pledge, assignment,  
13 or other disposition of the person's assets or any concealment,  
14 alteration, destruction, or other disposition of books,  
15 accounts, records, or other documents and materials as the  
16 court deems appropriate, until the person has fully complied  
17 with the subpoena or subpoena duces tecum and the Secretary has  
18 completed an investigation or examination.

19 (c) If it appears to the Secretary that the compliance with  
20 a subpoena or subpoena duces tecum issued or caused to be  
21 issued by the Secretary pursuant to this Section is essential  
22 to an investigation or examination, the Secretary, in addition  
23 to the other remedies provided for in this Act, may, through  
24 the Attorney General, apply for relief to the circuit court of  
25 the county in which the subpoenaed person resides or has its  
26 principal place of business. The court shall thereupon direct

1 the issuance of an order against the subpoenaed person  
2 requiring sufficient bond conditioned on compliance with the  
3 subpoena or subpoena duces tecum. The court shall cause to be  
4 endorsed on the order a suitable amount of bond or payment  
5 pursuant to which the person named in the order shall be freed,  
6 having a due regard to the nature of the case.

7 (d) In addition, the Secretary may, through the Attorney  
8 General, seek a writ of attachment or an equivalent order from  
9 the circuit court having jurisdiction over the person who has  
10 refused to obey a subpoena, who has refused to give testimony,  
11 or who has refused to produce the matters described in the  
12 subpoena duces tecum.

13 Section 20-25. Report required of licensee; false  
14 statements; delay; penalties.

15 (a) In addition to any reports required under this Act,  
16 every licensee shall file any other report the Secretary  
17 requests.

18 (b) Any licensee or any officer, director, employee, or  
19 agent of any licensee who fails to file any report required by  
20 this Act, including those under subsection (a), or who  
21 deliberately, willfully, or knowingly makes, subscribes to, or  
22 causes to be made any false entry with intent to deceive the  
23 Secretary or his or her appointees or who purposely causes  
24 unreasonable delay in filing such reports, shall be guilty of a  
25 Class 4 Felony.

1 Section 20-30. Suspension; revocation of licenses; fines.

2 (a) Upon written notice to a licensee, the Secretary may  
3 suspend or revoke any license issued pursuant to this Act if,  
4 in the notice, he or she makes a finding of one or more of the  
5 following:

6 (1) that through separate acts or an act or a course of  
7 conduct, the licensee has violated any provisions of this  
8 Act, any rule adopted by the Secretary, or any other law,  
9 rule, or regulation of this State or the United States;

10 (2) that any fact or condition exists that, if it had  
11 existed at the time of the original application for the  
12 license, would have warranted the Secretary in refusing  
13 originally to issue the license; or

14 (3) that if a licensee is other than an individual, any  
15 ultimate equitable owner, officer, director, or member of  
16 the licensed partnership, association, corporation, or  
17 other entity has acted or failed to act in a way that would  
18 be cause for suspending or revoking a license to that party  
19 as an individual.

20 (b) No license shall be suspended or revoked, except as  
21 provided in this Section, nor shall any licensee be fined  
22 without notice of his or her right to a hearing as provided in  
23 Section 20-65 of this Act.

24 (c) The Secretary, on good cause shown that an emergency  
25 exists, may suspend any license for a period not exceeding 180

1 days, pending investigation.

2 (d) The provisions of subsection (d) of Section 15-40 of  
3 this Act shall not affect a licensee's civil or criminal  
4 liability for acts committed prior to surrender of a license.

5 (e) No revocation, suspension, or surrender of any license  
6 shall impair or affect the obligation of any pre-existing  
7 lawful contract between the licensee and any person.

8 (f) Every license issued under this Act shall remain in  
9 force and effect until the license expires without renewal, is  
10 surrendered, is revoked, or is suspended in accordance with the  
11 provisions of this Act, but the Secretary shall have authority  
12 to reinstate a suspended license or to issue a new license to a  
13 licensee whose license has been revoked if no fact or condition  
14 then exists which would have warranted the Secretary in  
15 refusing originally to issue that license under this Act.

16 (g) Whenever the Secretary revokes or suspends a license  
17 issued pursuant to this Act or fines a licensee under this Act,  
18 he or she shall execute a written order to that effect. The  
19 Secretary shall post notice of the order on an agency Internet  
20 site maintained by the Secretary or on the Nationwide Mortgage  
21 Licensing System and Registry and shall serve a copy of the  
22 order upon the licensee. Any such order may be reviewed in the  
23 manner provided by Section 20-65 of this Act.

24 (h) If the Secretary finds any person in violation of the  
25 grounds set forth in subsection (i), he or she may enter an  
26 order imposing one or more of the following penalties:

1 (1) revocation of license;

2 (2) suspension of a license subject to reinstatement  
3 upon satisfying all reasonable conditions the Secretary  
4 may specify;

5 (3) placement of the licensee or applicant on probation  
6 for a period of time and subject to all reasonable  
7 conditions as the Secretary may specify;

8 (4) issuance of a reprimand;

9 (5) imposition of a fine not to exceed \$25,000 for each  
10 count of separate offense; except that a fine may be  
11 imposed not to exceed \$75,000 for each separate count of  
12 offense of paragraph (2) of subsection (i) of this Section;  
13 or

14 (6) denial of a license.

15 (i) The following acts shall constitute grounds for which  
16 the disciplinary actions specified in subsection (h) may be  
17 taken:

18 (1) being convicted or found guilty, regardless of  
19 pendency of an appeal, of a crime in any jurisdiction that  
20 involves fraud, dishonest dealing, or any other act of  
21 moral turpitude;

22 (2) fraud, misrepresentation, deceit, or negligence in  
23 any student loan transaction;

24 (3) a material or intentional misstatement of fact on  
25 an initial or renewal application;

26 (4) insolvency or filing under any provision of the

1 federal Bankruptcy Code as a debtor;

2 (5) failure to account or deliver to any person any  
3 property, such as any money, fund, deposit, check, draft,  
4 or other document or thing of value, that has come into his  
5 or her hands and that is not his or her property or that he  
6 or she is not in law or equity entitled to retain, under  
7 the circumstances and at the time which has been agreed  
8 upon or is required by law or, in the absence of a fixed  
9 time, upon demand of the person entitled to such accounting  
10 and delivery;

11 (6) failure to disburse funds in accordance with  
12 agreements;

13 (7) having a license, or the equivalent, to practice  
14 any profession or occupation revoked, suspended, or  
15 otherwise acted against, including the denial of licensure  
16 by a licensing authority of this State or another state,  
17 territory, or country for fraud, dishonest dealing, or any  
18 other act of moral turpitude;

19 (8) failure to comply with an order of the Secretary or  
20 rule made or issued under the provisions of this Act;

21 (9) engaging in activities regulated by this Act  
22 without a current, active license unless specifically  
23 exempted by this Act;

24 (10) failure to pay in a timely manner any fee, charge,  
25 or fine under this Act;

26 (11) failure to maintain, preserve, and keep available

1 for examination all books, accounts, or other documents  
2 required by the provisions of this Act and the rules of the  
3 Secretary;

4 (12) refusing, obstructing, evading, or unreasonably  
5 delaying an investigation, information request, or  
6 examination authorized under this Act, or refusing,  
7 obstructing, evading, or unreasonably delaying compliance  
8 with the Secretary's subpoena or subpoena duces tecum; and

9 (13) failure to comply with or a violation of any  
10 provision of this Act.

11 (j) A licensee shall be subject to the disciplinary actions  
12 specified in this Act for violations of subsection (i) by any  
13 officer, director, shareholder, joint venture, partner,  
14 ultimate equitable owner, or employee of the licensee.

15 (k) A licensee shall be subject to suspension or revocation  
16 for unauthorized employee actions only if there is a pattern of  
17 repeated violations by employees or the licensee has knowledge  
18 of the violations or there is substantial harm to a consumer.

19 (l) Procedures for surrender of a license include the  
20 following:

21 (1) The Secretary may, after 10 days' notice by  
22 certified mail to the licensee at the address set forth on  
23 the license, stating the contemplated action and in general  
24 the grounds for the contemplated action and the date, time,  
25 and place of a hearing thereon, and after providing the  
26 licensee with a reasonable opportunity to be heard prior to

1 such action, fine such licensee an amount not exceeding  
2 \$25,000 per violation, or revoke or suspend any license  
3 issued under this Act if he or she finds that:

4 (i) the licensee has failed to comply with any  
5 provision of this Act or any order, decision, finding,  
6 rule, regulation, or direction of the Secretary  
7 lawfully made pursuant to the authority of this Act; or

8 (ii) any fact or condition exists that, if it had  
9 existed at the time of the original application for the  
10 license, clearly would have warranted the Secretary in  
11 refusing to issue the license.

12 (2) Any licensee may submit an application to surrender  
13 a license, but, upon the Secretary approving the surrender,  
14 it shall not affect the licensee's civil or criminal  
15 liability for acts committed prior to surrender or entitle  
16 the licensee to a return of any part of the license fee.

17 Section 20-35. Investigation of complaints. The Secretary  
18 shall at all times maintain staff and facilities adequate to  
19 receive, record, and investigate complaints and inquiries made  
20 by any person concerning this Act and any licensees under this  
21 Act. Each licensee shall open its books, records, documents,  
22 and offices wherever situated to the Secretary or his or her  
23 appointees as needed to facilitate such investigations.

24 Section 20-40. Additional investigation and examination



1 authority. In addition to any authority allowed under this Act,  
2 the Secretary shall have the authority to conduct  
3 investigations and examinations as follows:

4 (1) For purposes of initial licensing, license  
5 renewal, license suspension, license conditioning, license  
6 revocation or termination, or general or specific inquiry  
7 or investigation to determine compliance with this Act, the  
8 Secretary shall have the authority to access, receive, and  
9 use any books, accounts, records, files, documents,  
10 information, or evidence, including, but not limited to,  
11 the following:

12 (A) criminal, civil, and administrative history  
13 information, including nonconviction data as specified  
14 in the Criminal Code of 2012;

15 (B) personal history and experience information,  
16 including independent credit reports obtained from a  
17 consumer reporting agency described in Section 603(p)  
18 of the federal Fair Credit Reporting Act; and

19 (C) any other documents, information, or evidence  
20 the Secretary deems relevant to the inquiry or  
21 investigation, regardless of the location, possession,  
22 control, or custody of the documents, information, or  
23 evidence.

24 (2) For the purposes of investigating violations or  
25 complaints arising under this Act or for the purposes of  
26 examination, the Secretary may review, investigate, or

1 examine any licensee, individual, or person subject to this  
2 Act as often as necessary in order to carry out the  
3 purposes of this Act. The Secretary may direct, subpoena,  
4 or order the attendance of and examine under oath all  
5 persons whose testimony may be required about the loans or  
6 the business or subject matter of any such examination or  
7 investigation, and may direct, subpoena, or order the  
8 person to produce books, accounts, records, files, and any  
9 other documents the Secretary deems relevant to the  
10 inquiry.

11 (3) Each licensee, individual, or person subject to  
12 this Act shall make available to the Secretary upon request  
13 the books and records relating to the operations of the  
14 licensee, individual, or person subject to this Act. The  
15 Secretary shall have access to those books and records and  
16 interview the officers, principals, employees, independent  
17 contractors, agents, and customers of the licensee,  
18 individual, or person subject to this Act concerning their  
19 business.

20 (4) Each licensee, individual, or person subject to  
21 this Act shall make or compile reports or prepare other  
22 information as directed by the Secretary in order to carry  
23 out the purposes of this Section, including, but not  
24 limited to:

25 (A) accounting compilations;

26 (B) information lists and data concerning loan

1 transactions in a format prescribed by the Secretary;  
2 or

3 (C) other information deemed necessary to carry  
4 out the purposes of this Section.

5 (5) In making any examination or investigation  
6 authorized by this Act, the Secretary may control access to  
7 any documents and records of the licensee or person under  
8 examination or investigation. The Secretary may take  
9 possession of the documents and records or place a person  
10 in exclusive charge of the documents and records in the  
11 place where they are usually kept. During the period of  
12 control, no person shall remove or attempt to remove any of  
13 the documents or records, except pursuant to a court order  
14 or with the consent of the Secretary. Unless the Secretary  
15 has reasonable grounds to believe the documents or records  
16 of the licensee have been, or are at risk of being altered  
17 or destroyed for purposes of concealing a violation of this  
18 Act, the licensee or owner of the documents and records  
19 shall have access to the documents or records as necessary  
20 to conduct its ordinary business affairs.

21 (6) In order to carry out the purposes of this Section,  
22 the Secretary may:

23 (A) retain attorneys, accountants, or other  
24 professionals and specialists as examiners, auditors,  
25 or investigators to conduct or assist in the conduct of  
26 examinations or investigations;

1           (B) enter into agreements or relationships with  
2 other government officials or regulatory associations  
3 in order to improve efficiencies and reduce regulatory  
4 burden by sharing resources, standardized or uniform  
5 methods or procedures, and documents, records,  
6 information, or evidence obtained under this Section;

7           (C) use, hire, contract, or employ public or  
8 privately available analytical systems, methods, or  
9 software to examine or investigate the licensee,  
10 individual, or person subject to this Act;

11           (D) accept and rely on examination or  
12 investigation reports made by other government  
13 officials, within or outside this State; or

14           (E) accept audit reports made by an independent  
15 certified public accountant for the licensee,  
16 individual, or person subject to this Act in the course  
17 of that part of the examination covering the same  
18 general subject matter as the audit and may incorporate  
19 the audit report in the report of the examination,  
20 report of investigation, or other writing of the  
21 Secretary.

22           (7) The authority of this Section shall remain in  
23 effect, whether such a licensee, individual, or person  
24 subject to this Act acts or claims to act under any  
25 licensing or registration law of this State or claims to  
26 act without the authority.

1           (8) No licensee, individual, or person subject to  
2           investigation or examination under this Section may  
3           knowingly withhold, abstract, remove, mutilate, destroy,  
4           or secrete any books, records, computer records, or other  
5           information.

6           Section 20-45. Confidential information. In hearings  
7           conducted under this Act, information presented into evidence  
8           that was acquired by the licensee when serving any individual  
9           in connection with a student loan, including all financial  
10          information of the individual, shall be deemed strictly  
11          confidential and shall be made available only as part of the  
12          record of a hearing under this Act or otherwise (i) when the  
13          record is required, in its entirety, for purposes of judicial  
14          review or (ii) upon the express written consent of the  
15          individual served, or in the case of his or her death or  
16          disability, the consent of his or her personal representative.

17          Section 20-50. Confidentiality.

18          (a) In order to promote more effective regulation and  
19          reduce regulatory burden through supervisory information  
20          sharing, except as otherwise provided in federal Public Law  
21          110-289, Section 1512, the requirements under any federal law  
22          or State law regarding the privacy or confidentiality of any  
23          information or material provided to the Nationwide Mortgage  
24          Licensing System and Registry, and any privilege arising under

1 federal or State law, including the rules of any federal or  
2 State court, with respect to such information or material,  
3 shall continue to apply to information or material after the  
4 information or material has been disclosed to the Nationwide  
5 Mortgage Licensing System and Registry. The information and  
6 material may be shared with all State and federal regulatory  
7 officials with student loan industry oversight authority  
8 without the loss of privilege or the loss of confidentiality  
9 protections provided by federal law or State law.

10 (b) In order to promote more effective regulation and  
11 reduce regulatory burden through supervisory information  
12 sharing, the Secretary is authorized to enter agreements or  
13 sharing arrangements with other governmental agencies, the  
14 Conference of State Bank Supervisors or other associations  
15 representing governmental agencies as established by rule,  
16 regulation, or order of the Secretary. The sharing of  
17 confidential supervisory information or any information or  
18 material described in subsection (a) of this Section pursuant  
19 to an agreement or sharing arrangement shall not result in the  
20 loss of privilege or the loss of confidentiality protections  
21 provided by federal law or State law.

22 (c) In order to promote more effective regulation and  
23 reduce regulatory burden through supervisory information  
24 sharing, information or material that is subject to a privilege  
25 or confidentiality under subsection (a) of this Section shall  
26 not be subject to the following:

1           (1) disclosure under any State law governing the  
2 disclosure to the public of information held by an officer  
3 or an agency of the State; or

4           (2) subpoena or discovery, or admission into evidence,  
5 in any private civil action or administrative process,  
6 unless with respect to any privilege held by the Nationwide  
7 Mortgage Licensing System and Registry with respect to the  
8 information or material, the person to whom such  
9 information or material pertains waives, in whole or in  
10 part, in the discretion of that person, that privilege.

11          (d) In order to promote more effective regulation and  
12 reduce regulatory burden through supervisory information  
13 sharing, any other law relating to the disclosure of  
14 confidential supervisory information or any information or  
15 material described in subsection (a) of this Section that is  
16 inconsistent with subsection (a) of this Section shall be  
17 superseded by the requirements of this Section to the extent  
18 the other law provides less confidentiality or a weaker  
19 privilege.

20          Section 20-55. Reports of violations. Any person licensed  
21 under this Act or any other person may report to the Secretary  
22 any information to show that a person subject to this Act is or  
23 may be in violation of this Act. A licensee who files a report  
24 with the Department that another licensee is engaged in one or  
25 more violations pursuant to this Act shall not be the subject

1 of disciplinary action by the Department, unless the Department  
2 determines, by a preponderance of the evidence available to the  
3 Department, that the reporting person knowingly and willingly  
4 participated in the violation that was reported.

5 Section 20-60. Rules and regulations of the Secretary.

6 (a) In addition to such powers as may be prescribed by this  
7 Act, the Secretary is hereby authorized and empowered to adopt  
8 rules consistent with the purposes of this Act, including, but  
9 not limited to:

10 (1) rules in connection with the activities of  
11 licensees as may be necessary and appropriate for the  
12 protection of consumers in this State;

13 (2) rules as may be necessary and appropriate to define  
14 improper or fraudulent business practices in connection  
15 with the activities of licensees in servicing student  
16 loans;

17 (3) rules that define the terms used in this Act and as  
18 may be necessary and appropriate to interpret and implement  
19 the provisions of this Act; and

20 (4) rules as may be necessary for the enforcement of  
21 this Act.

22 (b) The Secretary is hereby authorized and empowered to  
23 make specific rulings, demands, and findings that he or she  
24 deems necessary for the proper conduct of the student loan  
25 servicing industry.



1 (c) A person or entity may make a written application to  
2 the Department for a written interpretation of this Act. The  
3 Department may then, in its sole discretion, choose to issue a  
4 written interpretation. To be valid, a written interpretation  
5 must be signed by the Secretary, or his or her designee, and  
6 the Department's General Counsel. A written interpretation  
7 expires 2 years after the date that it was issued.

8 (d) No provision in this Act that imposes liability or  
9 establishes violations shall apply to any act taken by a person  
10 or entity in conformity with a written interpretation of this  
11 Act that is in effect at the time the act is taken,  
12 notwithstanding whether the written interpretation is later  
13 amended, rescinded, or determined be judicial or other  
14 authority to be invalid for any reason.

15 Section 20-65. Appeal and review.

16 (a) Any person or entity affected by a decision of the  
17 Secretary under any provision of this Act may obtain review of  
18 that decision within the Department.

19 (b) The Secretary may, in accordance with the Illinois  
20 Administrative Procedure Act, adopt rules to provide for review  
21 within the Department of his or her decisions affecting the  
22 rights of entities under this Act. The review shall provide  
23 for, at a minimum:

24 (1) appointment of a hearing officer other than a  
25 regular employee of the Department;

1           (2) appropriate procedural rules, specific deadlines  
2           for filings, and standards of evidence and of proof; and

3           (3) provision for apportioning costs among parties to  
4           the appeal.

5           (c) All final agency determinations of appeals to decisions  
6           of the Secretary may be reviewed in accordance with and under  
7           the provisions of the Administrative Review Law. Appeals from  
8           all final orders and judgments entered by a court in review of  
9           any final administrative decision of the Secretary or of any  
10          final agency review of a decision of the Secretary may be taken  
11          as in other civil cases.

12          Section 20-70. Violations of this Act; Secretary's orders.  
13          If the Secretary finds, as the result of examination,  
14          investigation, or review of reports submitted by a licensee,  
15          that the business and affairs of a licensee are not being  
16          conducted in accordance with this Act, the Secretary shall  
17          notify the licensee of the correction necessary. If a licensee  
18          fails to correct such violations, the Secretary shall issue an  
19          order requiring immediate correction and compliance with this  
20          Act, specifying a reasonable date for performance.

21          The Secretary may adopt rules to provide for an orderly and  
22          timely appeal of all orders within the Department. The rules  
23          may include provision for assessment of fees and costs.

24          Section 20-75. Collection of compensation. Unless exempt

1 from licensure under this Act, no person engaged in or offering  
2 to engage in any act or service for which a license under this  
3 Act is required may bring or maintain any action in any court  
4 of this State to collect compensation for the performance of  
5 the licensable services without alleging and proving that he or  
6 she was the holder of a valid student loan servicing license  
7 under this Act at all times during the performance of those  
8 services.

9 Section 20-80. Licensure fees.

10 (a) The fees for licensure shall be a \$1,000 application  
11 fee and an additional \$800 fee for investigation performed in  
12 conjunction with Section 15-5. The fees are nonrefundable.

13 (b) The fee for an application renewal shall be \$1,000. The  
14 fee is nonrefundable.

15 Section 20-85. Injunction. The Secretary, through the  
16 Attorney General, may maintain an action in the name of the  
17 people of the State of Illinois and may apply for an injunction  
18 in the circuit court to enjoin a person from engaging in  
19 unlicensed student loan servicing activity.

20 ARTICLE 25. CONSUMER FRAUD AND DECEPTIVE BUSINESS

21 PRACTICES ACT

22 Section 25-5. Enforcement; Consumer Fraud and Deceptive

1 Business Practices Act. The Attorney General may enforce a  
2 violation of Article 5 of this Act as an unlawful practice  
3 under the Consumer Fraud and Deceptive Business Practices Act.

4 ARTICLE 99. SEVERABILITY; EFFECTIVE DATE

5 Section 99-1. Severability. The provisions of this Act are  
6 severable under Section 1.31 of the Statute on Statutes.

7 Section 99-99. Effective date. This Act takes effect  
8 December 31, 2018."