

1 AN ACT relating to student loan servicers.

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

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

5 *As used in this subtitle:*

6 *(1) "Borrower" means:*

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

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

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

12 *(3) "Borrower working in public service" means a borrower who the servicer knows,*  
13 *or reasonably should know, is employed in a public service job, as defined in the*  
14 *Higher Education Act, 20 U.S.C. sec. 1087e(m), and administrative regulations*  
15 *promulgated thereunder;*

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

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

19 *(b) Student loan issued pursuant to the Federal Family Education Loan*  
20 *Program, which was purchased by the United States pursuant to the federal*  
21 *Ensuring Continued Access to Student Loans Act of 2008, Pub. L. No. 110-*  
22 *227, and is presently owned by the United States; or*

23 *(c) Other student loan issued pursuant to a federal program that is identified by*  
24 *the commissioner, in administrative regulation, as a federal student loan;*

25 *(5) "In this state" means any activity of a person relating to servicing student loans*  
26 *that originates:*

27 *(a) Inside this state and is directed to persons outside this state;*

- 1        (b) Outside this state and is directed to persons inside this state; or
- 2        (c) Inside this state and is directed to persons inside this state;
- 3        (6) "Licensee" means a person licensed as a student loan servicer under this
- 4        subtitle;
- 5        (7) "Military borrower" means a borrower who is, or self-identifies when interacting
- 6        with a student loan servicer as:
- 7        (a) A service member, as defined in the Service Member Civil Relief Act, 50
- 8        U.S.C. sec. 3911;
- 9        (b) A veteran of a branch of the Armed Forces, as defined in 38 U.S.C. sec.
- 10       101; or
- 11       (c) Any other member or veteran of the Armed Forces of the United States,
- 12       Reserves, or National Guard;
- 13       (8) "Older borrower" means someone who a servicer knows, or reasonably should
- 14       know, is sixty (60) years of age or older;
- 15       (9) "Qualified written request" means written correspondence made by a borrower,
- 16       other than notice on a payment medium supplied by a student loan servicer, that
- 17       is transmitted by mail, facsimile, or electronically through an e-mail address or
- 18       Web site designated by the servicer to receive communications from borrowers
- 19       that does all of the following:
- 20       (a) Enables the servicer to identify the name and account of the borrower; and
- 21       (b) Includes a statement:
- 22           1. Of the reasons for the borrower's belief, to the extent applicable, that
- 23           the borrower's account is in error; or
- 24           2. That provides sufficient detail to the servicer regarding the
- 25           information sought by the borrower, which may include requesting:
- 26           a. A complete payment history for the borrower's loan or the
- 27           borrower's account;

- 1                    b. A copy of the borrower's student loan promissory note; or  
2                    c. The contact information for the creditor to whom the borrower's  
3                    student loan is owed;

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

6 (a) Performing both of the following:

- 7                    1. Receiving any scheduled periodic payments from a borrower or any  
8                    notification that a borrower made a scheduled periodic payment; and  
9                    2. Applying payments to the borrower's account pursuant to the terms of  
10                    a student loan or the contract governing the servicing of the loan;

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

- 13                    1. Maintaining account records for the student loan; and  
14                    2. Communicating with the borrower regarding the student loan on  
15                    behalf of the owner of the student loan promissory note;

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

18 (d) Facilitating the activities described in paragraph (a) or (b) of this  
19 subsection;

20 (11) "Substantial stockholder" means a person owning or controlling, directly or  
21 indirectly, ten percent (10%) or more of the total outstanding stock of a  
22 corporation;

23 (12) "Student loan" means any loan to a borrower to finance postsecondary  
24 education or expenses related to postsecondary education; and

25 (13) "Student loan servicer" or "servicer":

26 (a) Means a person engaged in the business of servicing student loans in this  
27 state; and

1        (b) Shall include both licensees and persons that are exempt from licensure  
 2                    under this subtitle.

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

5        The provisions of this subtitle shall be subject to all applicable federal laws and  
 6        regulations. To the extent any provision of this subtitle conflicts with an applicable  
 7        federal law or regulation, the applicable federal law or regulation shall control.

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

10        (1) Except as provided in subsections (2) and (3) of this section, no person shall  
 11                    engage in the business of servicing student loans in this state without having first  
 12                    obtained a license as a student loan servicer in accordance with this subtitle.

13        (2) (a) The following may make an application to the commissioner for a claim of  
 14                    exemption under paragraph (b) of this subsection:

15                    1. A bank, trust company, or industrial loan company doing business  
 16                    under the authority of, or in accordance with, a license, certificate, or  
 17                    charter issued by the United States or any state, district, territory, or  
 18                    commonwealth of the United States that is authorized to transact  
 19                    business in this state;

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

23                    3. A savings and loan association, savings bank, or credit union  
 24                    organized under the laws of this or any other state that is authorized to  
 25                    transact business in this state; and

26                    4. A public postsecondary education institution or private nonprofit  
 27                    postsecondary education institution servicing a student loan extended

1 to the borrower.

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

- 8 1. Is servicing, or will service, student loans in this state; and  
 9 2. Shall comply with Sections 9, 11, 12, 13, 14, and 15 of this Act and  
 10 any administrative regulation promulgated pursuant to those  
 11 provisions.

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

- 13 1. As of the effective date of this Act, automatically be deemed, by  
 14 operation of law, as having been authorized by the commissioner to  
 15 service federal student loans in this state;  
 16 2. Notify the commissioner that the person is servicing federal student  
 17 loans in this state; and  
 18 3. Comply with Sections 9, 11, 12, 13, 14, and 15 of this Act and any  
 19 administrative regulation promulgated pursuant to those provisions.

20 (b) Unless the person has received an exemption under subsection (2) of this  
 21 section, a person that services federal student loans in this state shall not be  
 22 authorized to engage in the business of servicing non-federal student loans  
 23 in this state if the person is not licensed as a student loan servicer in  
 24 accordance with this subtitle.

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

27 (1) A person applying for a license as a student loan servicer under this subtitle shall

1 submit to the commissioner:

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

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

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

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

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

15 5. Information as to the character, fitness, financial and business  
16 responsibility, background, and experience of the applicant, or its  
17 members, officers, partners, directors, and principals as may be  
18 appropriate; and

19 6. Any additional detail or information required by the commissioner;  
20 and

21 (b) An application and investigation fee prescribed by the commissioner.

22 (2) The commissioner may deny an application for a license as a student loan  
23 servicer if:

24 (a) A false statement of material fact has been made on the application;

25 (b) A material requirement for issuance has not been met;

26 (c) The applicant, or any principal officer, director, general partner, managing  
27 member, or substantial stockholder of the applicant:

- 1           1. Within the last ten (10) years:
- 2           a. To the extent permitted under KRS 335B.020, has been convicted
- 3           of, or pleaded nolo contendere to, a felony; or
- 4           b. Has committed any act involving dishonesty, fraud, or deceit, but
- 5           only if the act is substantially related to the qualifications,
- 6           functions, or duties of a person engaged in business in
- 7           accordance with this subtitle;
- 8           2. Has violated, or is not in material compliance with, any provision of
- 9           this subtitle, an administrative regulation issued pursuant to this
- 10           subtitle, an order of the commissioner, or any similar regulatory
- 11           scheme of this or a foreign jurisdiction;
- 12           3. Has been held liable in any civil action by final judgment or any
- 13           administrative judgment by any public agency within the past seven
- 14           (7) years;
- 15           4. Has had, or has been an officer, director, partner, member, or
- 16           substantial stockholder of an entity which has had, a license or
- 17           registration revoked by the commissioner or any other regulator or
- 18           jurisdiction; or
- 19           5. Has otherwise been an agent or employee of an entity which has had a
- 20           license or registration revoked by the commissioner and the person
- 21           was found by the commissioner to bear responsibility in connection
- 22           with the revocation; or
- 23           (d) The commissioner is unable to find that the financial responsibility,
- 24           experience, character, and general fitness of the applicant and its general
- 25           partners, managing members, principal officers and directors, and
- 26           substantial stockholders command the confidence of the community and
- 27           warrant the belief that the business will be operated honestly, fairly, and

1 efficiently within the purposes of this subtitle.

2 (3) A license issued under this subtitle:

3 (a) Shall not be transferable or assignable; and

4 (b) Shall remain in full force and effect until it is surrendered, revoked, or  
 5 suspended.

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

8 (1) As used in this section, "registry" means the State Regulatory Registry, LLC, or  
 9 its successor organization.

10 (2) When an application, report, or approval request is required under this subtitle to  
 11 be filed with the commissioner, the commissioner may require, by administrative  
 12 regulation or order, that the filing, including any applicable fees and any  
 13 supporting documentation, be submitted to:

14 (a) The State Regulatory Registry, LLC, or its successor organization;

15 (b) The registry's parent, affiliate, or operating subsidiary; or

16 (c) Other agencies or authorities as part of a nationwide licensing system,  
 17 which may act as an agent for receiving, requesting, and distributing  
 18 information to and from any source directed by the commissioner.

19 (3) The commissioner may report violations of this subtitle, enforcement actions, and  
 20 other relevant information to the registry, notwithstanding any provision of this  
 21 subtitle to the contrary.

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

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

27 Upon any change of any of the executive officers, directors, partners, or members of a



1 licensee, the licensee shall submit to the commissioner the name, address, and  
 2 occupation of each new officer, director, partner, or member, and provide such other  
 3 information as the commissioner may require.

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

6 (1) As used in this section:

7 (a) "Control":

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

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

17 a. The voting stock of a licensee; or

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

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

26 (2) (a) The commissioner may determine whether or not the ownership, control, or  
 27 holding of voting stock constitutes, or would constitute, control of a licensee

1 for purposes of this section.

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

4 1. A licensee;

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

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

9 (3) (a) Except as provided in subsection (5) of this section, no person shall take an  
10 action that results in a change of control of a licensee without prior written  
11 approval from the commissioner.

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

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

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

17 b. Any other information that the commissioner deems necessary  
18 and appropriate for the purpose of making the determination  
19 required by subsection (4) of this section; and

20 2. Pay an investigation fee prescribed by the commissioner.

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

24 (5) For a change of control by operation of law to the legal representative of a person  
25 who has control of a licensee, the legal representative shall, within six (6) months  
26 from the date of the representative's qualification or for any additional period of  
27 time as the commissioner may, in writing, prescribe, make an application to the

1 commissioner under subsection (3) of this section for approval of the change of  
2 control, which shall be determined by the commissioner in accordance with  
3 subsection (4) of this section.

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

6 (1) As used in this section, "good cause" shall exist when a licensee has defaulted or  
7 is likely to default in performing its financial engagements or engages in  
8 dishonest or inequitable practices which may cause substantial harm to the  
9 persons afforded the protection of this subtitle.

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

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

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

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

20 (d) The licensee has engaged in fraud, intentional misrepresentation, or gross  
21 negligence in servicing a student loan;

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

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

- 1        (g) The licensee is insolvent, suspends payment of its obligations, or makes a  
2            general assignment for the benefit of its creditors; or
- 3        (h) The licensee has violated the laws of this state, any other state, or any  
4            federal law involving fraudulent or dishonest dealing, or a final judgment  
5            has been entered against the licensee in a civil action upon grounds of  
6            fraud, misrepresentation, or deceit.
- 7        (3) Notwithstanding subsection (4) of this section, the commissioner may, on good  
8            cause shown, or where there is a substantial risk of public harm, suspend any  
9            license, for a period not exceeding thirty (30) days, pending investigation.
- 10       (4) Except as provided in subsection (3) of this section, no license shall be revoked or  
11           suspended except after notice and hearing. Any order of suspension issued after  
12           notice and a hearing may include as a condition of reinstatement that the student  
13           loan servicer make restitution to borrowers of fees or other charges which have  
14           been improperly charged or collected, including but not limited to allocating  
15           payments contrary to a borrower's direction or in a manner that fails to help a  
16           borrower avoid default, as determined by the commissioner. Any hearing held  
17           pursuant to the provisions of this section shall be conducted in accordance with  
18           KRS Chapter 13B.
- 19       (5) (a) Any licensee may surrender a license issued under this subtitle by delivering  
20           written notice to the commissioner.
- 21       (b) The surrender of a license under this subsection shall not affect the student  
22           loan servicer's civil or criminal liability for acts committed prior to  
23           surrender.
- 24       (c) If a license is surrendered after the issuance of a statement of charges and  
25           notice of hearing by the commissioner, the commissioner may proceed  
26           against the student loan servicer as if the surrender had not taken place.
- 27       (6) No revocation, suspension, or surrender of a license issued under this subtitle

1 shall impair or affect the obligation of any pre-existing lawful contract between  
2 the student loan servicer and any person, including the department.

3 (7) If the commissioner revokes or suspends a license issued under this subtitle, the  
4 commissioner shall execute, in duplicate, a written order to that effect. The  
5 commissioner shall file one (1) copy of an order issued under this subsection in  
6 the office of the department and shall serve the other copy upon the student loan  
7 servicer. Any such order may be appealed by filing, in the Franklin Circuit Court,  
8 a petition for judicial review in accordance with KRS Chapter 13B.

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

11 (1) For at least (3) years, each student loan servicer shall keep and use in its business  
12 such books, accounts, and records as will enable the commissioner to determine  
13 whether the servicer is complying with the provisions of this subtitle and with the  
14 administrative regulations promulgated pursuant to this subtitle.

15 (2) (a) Each licensee shall annually file a report with the commissioner giving  
16 such information as the commissioner may require concerning the  
17 licensee's business and operations during the preceding calendar year. The  
18 report shall be subscribed and affirmed as true by the licensee under the  
19 penalties of perjury and shall be in the form prescribed by the  
20 commissioner.

21 (b) The commissioner may require additional regular or special reports from  
22 student loan servicers as the commissioner may deem necessary for the  
23 proper supervision of regulated persons under this subtitle. Such additional  
24 reports shall be subscribed and affirmed as true by the servicer under the  
25 penalties of perjury and shall be in the form prescribed by the  
26 commissioner.

27 ➔SECTION 10. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286

1 IS CREATED TO READ AS FOLLOWS:

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

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

10 (1) The provisions of this subtitle shall be enforced by the commissioner, who may  
 11 promulgate administrative regulations in accordance with KRS Chapter 13A for  
 12 the proper conduct of the business regulated under this subtitle.

13 (2) (a) The commissioner may conduct routine examinations of the books,  
 14 accounts, records, and files of any licensee and any other person to the  
 15 extent the commissioner is authorized by any other law to make an  
 16 examination into the affairs of that person.

17 (b) The commissioner may also conduct investigations of licensees, student  
 18 loan servicers, or additional persons within or outside of the state as the  
 19 commissioner deems necessary to discover violations of this subtitle or to  
 20 secure information necessary for its proper enforcement.

21 (c) For the purpose of making examinations or investigations under this  
 22 section, the commissioner and his or her representatives:

23 1. May:

24 a. Compel the attendance of any person or obtain any documents  
 25 by subpoenas;

26 b. Administer oaths and affirmations; and

27 c. Examine under oath or affirmation all persons whose testimony

1 he or she may require, relative to the loans or business of the  
2 business regulated under this subtitle; and

3 2. Shall have free access to the accounts, papers, records, files, safes,  
4 vaults, offices, and places of business used in connection with any  
5 business regulated under this subtitle.

6 (3) If any person fails to comply with a subpoena issued by the commissioner under  
7 this section, the commissioner may petition the Franklin Circuit Court or any  
8 court of competent jurisdiction for enforcement of the subpoena.

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

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

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

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

20 (a) Retain examiners, auditors, investigators, attorneys, accountants, or other  
21 professionals and specialists to conduct or assist in the conduct of any  
22 examination, investigation, or enforcement action; and

23 (b) Use, hire, contract, or employ public or private analytical systems, methods,  
24 or software.

25 (6) The authority of this section shall remain in effect whether a person acts or  
26 claims to act under any licensing law of this subtitle or acts or claims to act  
27 without such authority.

1 (7) In any hearing in which a department employee acting under authority of this  
 2 subtitle is available for cross-examination, any official written report, worksheet,  
 3 other related papers, or duly certified copy thereof, compiled, prepared, drafted,  
 4 or otherwise made by the department employee, after being duly authenticated by  
 5 the employee, may be admitted as competent evidence upon the oath of the  
 6 employee that the worksheet, report, or other related papers were prepared as a  
 7 result of an examination of the books and records of a servicer or other person,  
 8 conducted pursuant to the authority of this subtitle.

9 (8) If reports from, or examination of, a licensee provides evidence of unlawful  
 10 activity between a licensee and affiliate benefitting, affecting, or arising from the  
 11 activities regulated by this subtitle, the affiliate of a licensee shall be subject to  
 12 examination by the commissioner on the same terms as the licensee.

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

15 (1) As used in this section, "consumer reporting agency" means a consumer  
 16 reporting agency that compiles and maintains files on a nationwide basis as  
 17 defined in the Fair Credit Reporting Act, 15 U.S.C. sec. 1681a(p).

18 (2) A student loan servicer shall not engage in abusive acts or practices, including  
 19 but not limited to acts or practices that:

20 (a) Materially interfere with the ability of a borrower to understand a term or  
 21 condition of a student loan; or

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

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

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



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

3   (3) A student loan servicer shall not:

4           (a) Employ any scheme, device, or artifice to defraud or mislead a borrower;

5           (b) Engage in any unfair, deceptive, or predatory practice toward any borrower,  
6           or misrepresent or omit any material information in connection with  
7           servicing a student loan, including but not limited to:

8           1. Misrepresenting the amount, nature, or terms of any fee or payment  
9           due or claimed to be due on a student loan;

10          2. Misrepresenting the terms and conditions of the student loan  
11          agreement;

12          3. Misrepresenting the borrower's obligations under the student loan; or

13          4. With respect to a military borrower, older borrower, borrower working  
14          in public service, or a borrower with a disability, misrepresenting or  
15          omitting the availability of a program or protection specific to the  
16          respective borrower, or applicable to the respective category of  
17          borrowers;

18          (c) Misapply payments made by a borrower to the outstanding loan balance;

19          (d) Refuse to communicate with an authorized representative of the borrower  
20          who provides a written authorization signed by the borrower, except the  
21          servicer may adopt reasonable procedures for:

22          1. Verifying that the representative is in fact authorized to act on behalf  
23          of the borrower; and

24          2. Protecting the borrower from fraud or abusive practices;

25          (e) Make any false statement or omit a material fact in connection with any  
26          information or reports filed with a governmental agency or in connection  
27          with any investigation conducted by the commissioner or other

- 1           governmental agency;
- 2           (f) If the student loan servicer is required to report, or voluntarily reports, to a
- 3           consumer reporting agency, fail to accurately report each borrower's
- 4           payment performance to at least one (1) consumer reporting agency, upon
- 5           acceptance as a data furnisher by that consumer reporting agency;
- 6           (g) Fail to respond to a communication from the commissioner within fifteen
- 7           (15) calendar days, or within such shorter, reasonable time as the
- 8           commissioner may provide in the communication; or
- 9           (h) Fail to respond to a consumer complaint submitted to the servicer by the
- 10           commissioner within fifteen (15) calendar days of receipt of the complaint,
- 11           or such longer time as the commissioner may permit, not to exceed forty-
- 12           five (45) days, upon request from the servicer explaining why such
- 13           additional time is reasonable and necessary.

14           ➔SECTION 13. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286

15 IS CREATED TO READ AS FOLLOWS:

- 16           (1) (a) As used in this section:
- 17           1. "Best financial interest of the borrower" means reducing the total cost
- 18           of a student loan, including principal balance, interest, and fees;
- 19           2. "Minimum late fee" shall include any fee that is not assessed as a
- 20           percentage of any amount past due; and
- 21           3. "Qualified request" means any inbound telephone call, the subject of
- 22           which cannot be resolved in a single phone call, made by a borrower
- 23           to a student loan servicer in which either the borrower requests
- 24           specific information from the student loan servicer or reports what the
- 25           borrower believes to be an error regarding the borrower's account.
- 26           (b) As used in subsection (2)(c) and (p) of this section, "negative
- 27           consequences" shall include but not be limited to negative credit reporting,

1 lost eligibility for a borrower benefit, late fees, interest capitalization, and  
2 other financial injury.

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

8 (d) As used in subsection (2)(t) of this section, "necessary information" shall  
9 include but not be limited to the following:

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

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

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

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

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

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

23 7. Any information necessary to compile payment history.

24 (2) A student loan servicer shall:

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

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

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

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

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

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

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

1 change;

2 (d) Inquire of a borrower how to apply an overpayment to a student loan. A  
3 borrower's direction on how to apply an overpayment to a student loan shall  
4 be effective with respect to future overpayments during the term of a student  
5 loan until the borrower provides a different direction;

6 (e) In the absence of a direction provided by a borrower under paragraph (d) of  
7 this subsection, allocate an overpayment on a student loan account in a  
8 manner that is in the best financial interest of the borrower. A servicer shall  
9 be considered to have met the requirements of this paragraph if the servicer  
10 allocates the overpayment to the loan with the highest interest rate on the  
11 borrower's student loan account;

12 (f) Except as otherwise provided by a student loan agreement, comply with a  
13 direction provided by a borrower as to how to allocate a partial payment to a  
14 student loan;

15 (g) In the absence of a direction provided by a borrower under paragraph (f) of  
16 this subsection, allocate a partial payment in a manner that minimizes late  
17 fees and negative credit reporting. A servicer shall be considered to have  
18 met the requirements of this paragraph if, when there are multiple loans on  
19 a borrower's student loan account at an equal stage of delinquency, the  
20 servicer allocates partial payments to satisfy as many loans as possible on a  
21 borrower's student loan account;

22 (h) If a servicer imposes a fee on a borrower for a past due student loan  
23 payment, that fee shall:

24 1. Be reasonable and proportional to the total costs incurred as a result  
25 of the late payment by the borrower; and

26 2. Not exceed six percent (6%) of any amount past due;

27 (i) Not impose a minimum late fee;

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

1           that request has been resolved;

2           (q) Notwithstanding paragraph (p) of this subsection, after receipt of a  
3           qualified request or qualified written request related to the dispute on the  
4           borrower's payment on a student loan, not for sixty (60) days furnish  
5           information to a consumer reporting agency regarding a payment that is the  
6           subject of the qualified request or qualified written request;

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

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

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

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

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

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

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

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

1        (t) Ensure that all necessary information regarding a borrower, a borrower's  
2        account, and a borrower's student loan accompanies a loan when it  
3        transfers to a new student loan servicer within forty-five (45) calendar days  
4        of the effective date of the sale, assignment, or transfer;

5        (u) Provide specialized training for any customer service personnel that advise:

6            1. Military borrowers about student loan repayment benefits and  
7            protections;

8            2. Borrowers working in public service about student loan repayment  
9            benefits and protections;

10          3. Older borrowers about the risks specifically applicable to older  
11          borrowers to ensure that, once identified, older borrowers are  
12          informed about student loan repayment benefits and protections,  
13          including disability discharge programs for private and federal loans,  
14          if applicable, and to the extent an older borrower serves as cosigner,  
15          about cosigner release provisions in private student loan contracts; or

16          4. Borrowers with disabilities about student loan repayment benefits and  
17          protections, including disability discharge programs for private and  
18          federal loans;

19        (v) Not engage in an unfair or deceptive practice toward any borrower with a  
20        disability or misrepresent or omit any material information in connection  
21        with servicing a student loan owed by a borrower with a disability, including  
22        but not limited to misrepresenting or omitting the following:

23            1. The availability of any program or protection specific to borrowers  
24            with disabilities or applicable to those borrowers;

25            2. The amount, nature, or terms of any fee or payment due or claimed to  
26            be due on a student loan;

27            3. The terms and conditions of the student loan agreement; and



- 1            4. The borrower's obligations under the student loan;
- 2            (w) Respond to a qualified written request by acknowledging receipt of the
- 3            request within ten (10) business days, and within thirty (30) business days,
- 4            provide information relating to the request and, if applicable, either the
- 5            action the student loan servicer will take to correct the account or an
- 6            explanation for the position that the borrower's account is correct. The
- 7            thirty (30) day period described in this paragraph may be extended for not
- 8            more than fifteen (15) days if, before the end of the thirty (30) day period,
- 9            the servicer notifies the borrower of the extension and the reason for the
- 10           delay in responding; and
- 11           (x) Respond within ten (10) business days to communications from the student
- 12           loan ombudsman, established under Section 18 of this Act, or within a
- 13           shorter, reasonable time as the student loan ombudsman may provide in the
- 14           communication.

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

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

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

21           (1) In addition to any other remedies, penalties, or damages available under common  
 22           law or statute for a violation of this subtitle, the commissioner may, after notice  
 23           and hearing, impose a penalty not to exceed the greater of:

24           (a) Two thousand dollars (\$2,000) or for a willful violation, ten thousand  
 25           dollars (\$10,000);

26           (b) A multiple of two (2) times the aggregate damages attributable to the  
 27           violation; or



1 borrower shall:

2 (a) Provide written notice to, by certified or registered mail, return receipt  
3 requested, the address on file with the department or the principal place of  
4 business of, the student loan servicer alleged to have violated this subtitle  
5 regarding the nature of the alleged violation; and

6 (b) Demand that the student loan servicer correct and remedy the method, acts,  
7 or practices referred to in the notice provided under this subsection.

8 (4) (a) An action for damages or injunctive relief brought under this section by a  
9 borrower, only on behalf of the borrower, shall not be maintained upon a  
10 showing by the student loan servicer that the appropriate correction and  
11 remedy has been given, or agreed to be given within a reasonable time, to  
12 the consumer within thirty (30) days after receipt of the notice.

13 (b) An action for damages or injunctive relief brought under this section by a  
14 borrower and on behalf of similarly situated borrowers shall not be  
15 maintained upon a showing by the student loan servicer that:

16 1. All borrowers similarly situated have been identified, or a reasonable  
17 effort has been made to identify the borrowers;

18 2. All borrowers so identified have been notified that, upon the  
19 borrower's request, the student loan servicer shall make the  
20 appropriate correction and remedy;

21 3. The correction and remedy requested by the borrowers has been, or  
22 within a reasonable time will be, given; and

23 4. The student loan servicer has ceased engaging or, if immediate  
24 cessation is impossible or unreasonably expensive under the  
25 circumstances, will cease to engage within a reasonable time, the  
26 methods, acts, or practices.

27 (5) (a) An attempt to comply with a demand under subsection (3) of this section:

1           1. Shall be construed to be an offer or compromise that is inadmissible  
2           as evidence pursuant to Rule 408 of the Kentucky Rules of Evidence;

3           and

4           2. Shall not be considered an admission of a violation of any provision of  
5           this subtitle.

6           (b) Evidence of compliance or attempts to comply with this section may be  
7           introduced by a defendant for the purpose of establishing good faith or to  
8           show compliance with this subtitle.

9           (6) An award of damages shall not be given in an action established under this  
10           section if the student loan servicer:

11           (a) Proves by a preponderance of the evidence that the violation was not  
12           intentional and resulted from a bona fide error notwithstanding the use of  
13           reasonable procedures adopted to avoid that error; and

14           (b) Makes an appropriate correction, repair, replacement, or other remedy in  
15           accordance with subsections (3) and (4) of this section.

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

18           (1) The commissioner may monitor risks to consumers in the provision of student  
19           loan servicing in this state, including developments in the market for those  
20           services, by compiling and analyzing data and other information based on any of  
21           the following considerations:

22           (a) The likely risks and costs to borrowers associated with using or repaying a  
23           student loan or with the servicing of a student loan;

24           (b) Consumers' understanding of the risks of a student loan or the servicing of  
25           a student loan;

26           (c) The legal protections applicable to the offering, provision, or servicing of a  
27           student loan, including the extent to which the law is likely to adequately

1           protect consumers;

2           (d) The rates of growth in the offering, provision, or servicing of a student  
3           loan;

4           (e) The extent, if any, to which the risks of a student loan or the servicing of a  
5           student loan disproportionately affect traditionally underserved consumers;  
6           and

7           (f) The type, number, and other pertinent characteristics of student loan  
8           servicers in this state.

9           (2) Except for student loan servicers that are national banks, as defined in 12 U.S.C.  
10           sec. 25b, and only to the extent that the requirements of this section are  
11           preempted with respect to national banks pursuant to 12 U.S.C. sec. 25b, in  
12           conducting any monitoring or assessment authorized by this section, the  
13           commissioner may gather information regarding the organization, business  
14           conduct, markets, and activities of student loan servicers in this state;

15           (3) In order to gather the information described in subsection (1) of this section the  
16           commissioner may:

17           (a) Gather and compile information from a variety of sources, including  
18           consumer complaints, voluntary surveys and voluntary interviews of  
19           consumers, surveys and interviews with student loan servicers and service  
20           providers, and review of available databases; and

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

27           (4) The commissioner may:

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

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

11 1. Metrics based on data collected pursuant to this section which may  
 12 identify each student loan servicer; and

13 2. Relevant metrics related to performance of student loan servicing by  
 14 each student loan servicer; and

15 (c) Confer with the student loan ombudsman established under Section 18 of  
 16 this Act to develop and publish the information described in this subsection.

17 (5) The commissioner may enter into contracts to perform the duties required in this  
 18 section, as necessary.

19 (6) The operation of this section shall be contingent upon an appropriation for its  
 20 purposes.

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

23 (1) Within one hundred eighty (180) days of the effective date of this Act, the  
 24 commissioner shall designate a student loan ombudsman to work within the  
 25 department. The student loan ombudsman shall hire additional staff necessary to  
 26 implement this section.

27 (2) The student loan ombudsman shall have the following duties:

- 1        (a) Receiving, reviewing, and referring complaints in accordance with  
2        subsection (3) of this section from borrowers;
- 3        (b) Compiling and analyzing data on the number of borrower complaints:  
4            1. Received by the department; and  
5            2. Referred to any other state or federal agency;
- 6        (c) Providing information to the public, agencies, legislators, and others  
7        regarding the problems and concerns of borrowers and making  
8        recommendations for resolving those problems and concerns;
- 9        (d) Analyzing and monitoring the development and implementation of federal  
10       and state laws and policies relating to borrowers;
- 11       (e) Disseminating information concerning the availability of any other state  
12       and federal agency to accept complaints from individual borrowers and  
13       potential borrowers; and
- 14       (f) Except for student loan servicers that are national banks, as defined in 12  
15       U.S.C. sec. 25b, and only to the extent that the requirements of this  
16       paragraph are preempted with respect to national banks pursuant to 12  
17       U.S.C. sec. 25b, requesting and compiling information provided by any  
18       student loan servicer if reasonably determined by the student loan  
19       ombudsman to be necessary to effectuate the duties described in this  
20       section.
- 21       (3) (a) The student loan ombudsman shall confer with any applicable state or  
22       federal agency regarding student loan complaints, the proper referral  
23       process for those complaints, and the reporting requirements of the student  
24       loan ombudsman under this subtitle.
- 25       (b) Complaints shall be referred as follows:  
26            1. Any complaint regarding a person subject to this subtitle shall be  
27            referred to the appropriate unit within the department, which may

1 investigate complaints referred by the student loan ombudsman and  
2 complaints submitted directly to the department from the public;

3 2. Any complaint regarding student loans not subject to this subtitle shall  
4 be referred to the applicable state or federal agency with jurisdiction to  
5 investigate the complaint; and

6 3. Any complaint that may also be subject to the jurisdiction of a state or  
7 federal agency other than the department, shall be referred to the  
8 applicable state or federal agency in addition to the referral required  
9 under subparagraph 1. of this paragraph.

10 (4) Within eighteen (18) months of the effective date of this Act, and annually  
11 thereafter, the student loan ombudsman shall submit a report to the Interim Joint  
12 Committees on Education and Banking and Insurance reporting on the  
13 following:

14 (a) The implementation of this section;

15 (b) The types of complaints received regarding student loan borrowing, student  
16 loan repayment and servicing, and how the complaints were resolved; and

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

19 (5) The operation of this section shall be contingent upon an appropriation for its  
20 purposes.

21 ➔Section 19. If any provision of this Act, or this Act's application to any person  
22 or circumstance, is held invalid, the invalidity shall not affect other provisions or  
23 applications of the Act, which shall be given effect without the invalid provision or  
24 application, and to this end the provisions and applications of this Act are severable.