

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 19-0482.02 Thomas Morris x4218

SENATE BILL 19-002

SENATE SPONSORSHIP

Winter and Fenberg,

HOUSE SPONSORSHIP

(None),

Senate Committees

Education
Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE REGULATION OF STUDENT EDUCATION LOAN**
102 **SERVICERS, AND, IN CONNECTION THEREWITH, MAKING AN**
103 **APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill requires an entity that services a student education loan to be licensed by the administrator of the "Uniform Consumer Credit Code". "Servicing" means receiving a scheduled periodic payment from a student loan borrower, applying the payments of principal and interest with respect to the amounts received from a student loan borrower, and similar

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

administrative services. The bill also creates a student loan ombudsperson to provide timely assistance to student loan borrowers.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby:

4 (a) Finds that:

5 (I) Student loan debt has reached a crisis point. More than
6 44,000,000 individuals in the United States owe some amount of student
7 loan debt. Total student loan debt in the United States currently exceeds
8 \$1.48 trillion, surpassing both the amount of credit card debt and car
9 loans. With tuition and other college costs on the rise, student loan debt
10 continues to rise, with no clear reduction in sight.

11 (II) According to the Institute for College Access and Success, 52
12 percent of Colorado's students graduate with student loan debt, with an
13 average balance of \$26,530. There are approximately 761,000 student
14 loan borrowers in Colorado, and the total student loan debt outstanding
15 for Coloradans is approximately \$26 billion.

16 (III) Student loan debt is a hindrance to the state's economy,
17 preventing borrowers from achieving financial independence, buying
18 property, starting businesses, and otherwise investing in Colorado's
19 economy;

20 (b) Determines that:

21 (I) Student loan servicers administer student loans, serving as a
22 critical link between borrowers and lenders in managing accounts,
23 processing payments, and communicating directly with borrowers.
24 Despite this critical relationship, according to the federal consumer
25 financial protection bureau (CFPB), there are no consistent, market-wide

1 federal standards for student loan servicing.

2 (II) The CFPB released a report in September of 2015 that found
3 that student loan borrowers encounter servicers that discourage
4 borrower-friendly alternative payment plans, fail to respond to questions
5 and payment processing errors, and fail to provide sufficient information
6 to borrowers regarding payments, benefits, interest rates, and other
7 charges; and

8 (III) A report released in March of 2017 found that Coloradans
9 complained to the CFPB 124 times about their student loan servicers in
10 2017 alone, and that nationally, complaints against servicers had
11 increased by 429 percent compared to data collected in 2016; and

12 (c) Declares that it intends by the enactment of the "Colorado
13 Student Loan Servicers Act" to promote all of the following:

14 (I) Meaningful access to federal affordable repayment and loan
15 forgiveness benefits;

16 (II) Reliable information about student loans and loan repayment
17 options;

18 (III) The public interest in furtherance of the state's historic police
19 powers to protect the health, welfare, and safety of the state and, in
20 furtherance of the public interest, the act should be liberally construed to
21 effectuate that intent; and

22 (IV) Quality customer service and fair treatment.

23 **SECTION 2.** In Colorado Revised Statutes, **add** article 20 to title
24 5 as follows:

25 **ARTICLE 20**

26 **Colorado Student Loan Servicers**

27 **5-20-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 20 IS THE

1 "COLORADO STUDENT LOAN SERVICERS ACT".

2 **5-20-102. Scope of article.** THIS ARTICLE 20 APPLIES TO ANY
3 PERSON ENGAGED IN SERVICING A STUDENT EDUCATION LOAN OWED BY AN
4 INDIVIDUAL WHO IS A RESIDENT OF THIS STATE. FOR THE PURPOSES OF THIS
5 ARTICLE 20, THE RESIDENCE OF AN INDIVIDUAL IS THE ADDRESS GIVEN BY
6 THE INDIVIDUAL AS THE INDIVIDUAL'S RESIDENCE TO THE CREDITOR OR TO
7 THE STUDENT LOAN SERVICER. UNTIL AN INDIVIDUAL NOTIFIES THE
8 CREDITOR OR THE STUDENT LOAN SERVICER OF A NEW OR DIFFERENT
9 ADDRESS, THE GIVEN ADDRESS IS PRESUMED TO BE UNCHANGED.

10 **5-20-103. Definitions.** AS USED IN THIS ARTICLE 20, UNLESS THE
11 CONTEXT OTHERWISE REQUIRES:

12 (1) "ADMINISTRATOR" MEANS THE ADMINISTRATOR DESIGNATED
13 IN SECTION 5-6-103.

14 (2) "CONSUMER REPORTING AGENCY" HAS THE MEANING
15 ESTABLISHED IN SECTION 5-18-103 (4).

16 (3) "EDUCATION EXPENSES" MEANS ANY OF THE EXPENSES THAT
17 ARE INCLUDED AS PART OF THE COST OF ATTENDANCE OF A STUDENT AS
18 DEFINED IN 20 U.S.C. SEC. 1087II, AS AMENDED.

19 (4) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
20 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER
21 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

22 (5) "SERVICING" MEANS:

23 (a) (I) RECEIVING ANY SCHEDULED PERIODIC PAYMENTS FROM A
24 BORROWER OR NOTIFICATION OF SUCH PAYMENTS; AND

25 (II) APPLYING PAYMENTS TO THE BORROWER'S ACCOUNT
26 PURSUANT TO THE TERMS OF A STUDENT EDUCATION LOAN OR OF THE
27 CONTRACT GOVERNING THE SERVICING;

1 (b) DURING A PERIOD WHEN NO PAYMENT IS REQUIRED ON A
2 STUDENT EDUCATION LOAN:

3 (I) MAINTAINING ACCOUNT RECORDS FOR THE STUDENT
4 EDUCATION LOAN; AND

5 (II) COMMUNICATING WITH THE BORROWER REGARDING THE
6 STUDENT EDUCATION LOAN, ON BEHALF OF THE LOAN'S HOLDER; OR

7 (c) INTERACTIONS WITH A BORROWER, INCLUDING ACTIVITIES TO
8 HELP PREVENT DEFAULT ON OBLIGATIONS ARISING FROM STUDENT
9 EDUCATION LOANS, CONDUCTED TO FACILITATE THE ACTIVITIES
10 DESCRIBED IN SUBSECTION (5)(a) OR (5)(b) OF THIS SECTION.

11 (6) "STUDENT EDUCATION LOAN":

12 (a) MEANS A LOAN THAT IS MADE, INSURED, OR GUARANTEED
13 UNDER TITLE IV OF THE FEDERAL "HIGHER EDUCATION ACT OF 1965", 20
14 U.S.C. SEC. 1070 ET SEQ., AS AMENDED, OR THAT IS EXTENDED TO A
15 STUDENT LOAN BORROWER FOR THE PURPOSE OF FUNDING, IN WHOLE OR
16 IN PART, EDUCATION EXPENSES. THE TERM INCLUDES A LOAN THAT IS
17 EXTENDED IN ORDER TO REFINANCE OR CONSOLIDATE A STUDENT LOAN
18 BORROWER'S EXISTING STUDENT EDUCATION LOANS.

19 (b) DOES NOT INCLUDE A LOAN UNDER AN OPEN-END CREDIT PLAN,
20 AS DEFINED IN REGULATION Z, 12 CFR 1026.2 (a)(20), OR A LOAN THAT
21 IS SECURED BY REAL PROPERTY, REGARDLESS OF THE PURPOSE FOR THE
22 LOAN.

23 (7) "STUDENT LOAN BORROWER" OR "BORROWER" MEANS:

24 (a) AN INDIVIDUAL WHO HAS RECEIVED OR AGREED TO PAY A
25 STUDENT EDUCATION LOAN; OR

26 (b) AN INDIVIDUAL WHO SHARES RESPONSIBILITY WITH THE
27 INDIVIDUAL SPECIFIED IN SUBSECTION (7)(a) OF THIS SECTION FOR

1 REPAYING THE STUDENT EDUCATION LOAN.
2 (8) "STUDENT LOAN SERVICER":
3 (a) MEANS A PERSON THAT:
4 (I) (A) RECEIVES ANY SCHEDULED PERIODIC PAYMENTS FROM A
5 STUDENT LOAN BORROWER OR NOTIFICATION OF THE PAYMENTS; AND
6 (B) APPLIES PAYMENTS TO THE STUDENT LOAN BORROWER'S
7 ACCOUNT PURSUANT TO THE TERMS OF THE STUDENT EDUCATION LOAN OR
8 OF THE CONTRACT GOVERNING THE SERVICING;
9 (II) DURING A PERIOD WHEN NO PAYMENT IS REQUIRED ON A
10 STUDENT EDUCATION LOAN:
11 (A) MAINTAINS ACCOUNT RECORDS FOR THE LOAN; AND
12 (B) COMMUNICATES WITH THE STUDENT LOAN BORROWER
13 REGARDING THE LOAN, ON BEHALF OF THE LOAN'S HOLDER; OR
14 (III) INTERACTS WITH A STUDENT LOAN BORROWER, INCLUDING
15 ACTIVITIES TO HELP PREVENT DEFAULT ON OBLIGATIONS ARISING FROM
16 EDUCATION LOANS, CONDUCTED TO FACILITATE THE ACTIVITIES
17 DESCRIBED IN SUBSECTION (8)(a)(I) OR (8)(a)(II) OF THIS SECTION;
18 (b) DOES NOT INCLUDE:
19 (I) A BANK, TRUST COMPANY, OR INDUSTRIAL LOAN COMPANY
20 DOING BUSINESS UNDER THE AUTHORITY OF, OR IN ACCORDANCE WITH, A
21 LICENSE, CERTIFICATE, OR CHARTER ISSUED BY THE UNITED STATES OR
22 ANY STATE, DISTRICT, TERRITORY, OR COMMONWEALTH OF THE UNITED
23 STATES THAT IS AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE;
24 (II) A FEDERALLY CHARTERED SAVINGS AND LOAN ASSOCIATION,
25 FEDERAL SAVINGS BANK, OR FEDERAL CREDIT UNION THAT IS AUTHORIZED
26 TO TRANSACT BUSINESS IN THIS STATE;
27 (III) A SAVINGS AND LOAN ASSOCIATION, SAVINGS BANK, OR

1 CREDIT UNION ORGANIZED UNDER THE LAWS OF THIS OR ANY OTHER STATE
2 THAT IS AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE; OR
3 (IV) A COLLECTION AGENCY, AS DEFINED IN SECTION 5-16-103 (3),
4 THAT IS LICENSED PURSUANT TO SECTION 5-16-120 AND WHOSE STUDENT
5 LOAN DEBT COLLECTION BUSINESS INVOLVES COLLECTING OR ATTEMPTING
6 TO COLLECT ON DEFAULTED STUDENT LOANS; EXCEPT THAT A COLLECTION
7 AGENCY THAT ALSO SERVICES NONDEFAULTED STUDENT LOANS AS PART
8 OF ITS BUSINESS IS A STUDENT LOAN SERVICER. FOR THE PURPOSE OF THIS
9 SUBSECTION (8)(b)(IV), "DEFAULTED STUDENT LOANS" MEANS FEDERAL
10 STUDENT LOANS FOR WHICH NO PAYMENT HAS BEEN RECEIVED FOR TWO
11 HUNDRED SEVENTY DAYS OR MORE OR PRIVATE STUDENT LOANS IN
12 DEFAULT ACCORDING TO THE TERMS OF THE LOAN DOCUMENTS. THIS
13 SUBSECTION (8)(b)(IV) DOES NOT EXEMPT A COLLECTION AGENCY FROM
14 COMPLYING WITH THE REQUIREMENTS OF THE "COLORADO FAIR DEBT
15 COLLECTION PRACTICES ACT", ARTICLE 16 OF THIS TITLE 5.

16 **5-20-104. Student loan ombudsperson - report - fund - rules**
17 **- repeal.** (1) THE ADMINISTRATOR SHALL DESIGNATE, SUPPORT, AND
18 MAINTAIN A STUDENT LOAN OMBUDSPERSON TO PROVIDE TIMELY
19 ASSISTANCE TO STUDENT LOAN BORROWERS. THE STUDENT LOAN
20 OMBUDSPERSON, IN CONSULTATION WITH THE ADMINISTRATOR, SHALL:

21 (a) **Complaints.** RECEIVE, REVIEW, AND ATTEMPT TO RESOLVE
22 COMPLAINTS FROM STUDENT LOAN BORROWERS, INCLUDING IN
23 COLLABORATION WITH INSTITUTIONS OF HIGHER EDUCATION, STUDENT
24 LOAN SERVICERS, AND ANY OTHER PARTICIPANTS IN STUDENT LOAN
25 LENDING, INCLUDING ORIGINATORS SERVICING THEIR OWN STUDENT
26 EDUCATION LOANS;

27 (b) **Data.** COMPILE AND ANALYZE DATA ON STUDENT LOAN

1 BORROWER COMPLAINTS AS DESCRIBED IN SUBSECTION (1)(a) OF THIS
2 SECTION:

3 (c) Assistance. ASSIST STUDENT LOAN BORROWERS IN
4 UNDERSTANDING THEIR RIGHTS AND RESPONSIBILITIES UNDER THE TERMS
5 OF STUDENT EDUCATION LOANS:

6 (d) Information. PROVIDE INFORMATION TO THE PUBLIC,
7 AGENCIES, LEGISLATORS, AND OTHERS REGARDING THE PROBLEMS AND
8 CONCERNS OF STUDENT LOAN BORROWERS AND MAKE RECOMMENDATIONS
9 FOR RESOLVING THOSE PROBLEMS AND CONCERNS:

10 (e) Laws, rules, and policies. ANALYZE AND MONITOR THE
11 DEVELOPMENT AND IMPLEMENTATION OF FEDERAL, STATE, AND LOCAL
12 LAWS, ORDINANCES, REGULATIONS, RULES, AND POLICIES RELATING TO
13 STUDENT LOAN BORROWERS AND RECOMMEND ANY NECESSARY CHANGES:

14 (f) Student loan history. REVIEW THE COMPLETE STUDENT
15 EDUCATION LOAN HISTORY FOR A STUDENT LOAN BORROWER WHO
16 PROVIDES WRITTEN CONSENT FOR THE REVIEW:

17 (g) Availability. DISSEMINATE INFORMATION CONCERNING THE
18 AVAILABILITY OF THE STUDENT LOAN OMBUDSPERSON TO ASSIST STUDENT
19 LOAN BORROWERS AND POTENTIAL STUDENT LOAN BORROWERS,
20 INCLUDING DISSEMINATING THE INFORMATION TO INSTITUTIONS OF HIGHER
21 EDUCATION, STUDENT LOAN SERVICERS, AND ANY OTHER PARTICIPANTS IN
22 STUDENT EDUCATION LOAN LENDING WITH ANY SERVICING CONCERNS:

23 (h) Education course. ESTABLISH AND MAINTAIN A STUDENT
24 LOAN BORROWER EDUCATION COURSE WITHIN EXISTING RESOURCES THAT
25 INCLUDES EDUCATIONAL PRESENTATIONS AND MATERIALS REGARDING
26 STUDENT EDUCATION LOANS. THE COURSE MUST INCLUDE AT LEAST KEY
27 LOAN TERMS, DOCUMENTATION REQUIREMENTS, MONTHLY PAYMENT

1 OBLIGATIONS, INCOME-BASED REPAYMENT OPTIONS, LOAN FORGIVENESS,
2 AND DISCLOSURE REQUIREMENTS.

3 (i) **Other actions.** TAKE ANY OTHER ACTIONS NECESSARY TO
4 FULFILL THE DUTIES OF THE STUDENT LOAN OMBUDSPERSON AS SET FORTH
5 IN THIS SECTION.

6 (2) (a) **Annual report.** THE ADMINISTRATOR SHALL SUBMIT A
7 REPORT BY JANUARY 1 OF EACH YEAR TO THE COMMITTEES OF REFERENCE
8 OF THE GENERAL ASSEMBLY HAVING JURISDICTION OVER EDUCATION,
9 INSURANCE, AND FINANCIAL SERVICES MATTERS. THE REPORT MUST
10 INCLUDE:

11 (I) **Implementation.** A DESCRIPTION OF ACTIONS TAKEN WITH
12 RESPECT TO THE IMPLEMENTATION OF THIS SECTION;

13 (II) **Effectiveness.** AN ASSESSMENT OF THE OVERALL
14 EFFECTIVENESS OF THE STUDENT LOAN OMBUDSPERSON; AND

15 (III) **Additional steps.** RECOMMENDATIONS REGARDING
16 ADDITIONAL STEPS FOR THE ADMINISTRATOR TO GAIN REGULATORY
17 CONTROL OVER LICENSING AND ENFORCEMENT WITH RESPECT TO STUDENT
18 LOAN SERVICERS.

19 (b) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE SEPTEMBER 1,
20 2023.

21 (3) **Student loan ombudsperson and student loan servicer**
22 **licensing fund.** (a) THE STUDENT LOAN OMBUDSPERSON AND STUDENT
23 LOAN SERVICER LICENSING FUND, REFERRED TO IN THIS SECTION AS THE
24 "FUND", IS HEREBY CREATED IN THE STATE TREASURY. THE FUND
25 CONSISTS OF LICENSING AND INVESTIGATION FEES COLLECTED PURSUANT
26 TO SECTION 5-20-107, CIVIL PENALTIES COLLECTED PURSUANT TO
27 SECTIONS 5-20-114 AND 5-20-117, ANY OTHER MONEY REQUIRED BY LAW

1 TO BE DEPOSITED IN THE FUND, AND ANY OTHER MONEY THAT THE
2 GENERAL ASSEMBLY MAY APPROPRIATE OR TRANSFER TO THE FUND.

3 (b) THE STATE TREASURER SHALL CREDIT ALL INTEREST AND
4 INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE
5 FUND TO THE FUND.

6 (c) ALL MONEY HELD IN THE FUND IS CONTINUOUSLY
7 APPROPRIATED TO THE DEPARTMENT OF LAW. THE ADMINISTRATOR SHALL
8 EXPEND MONEY HELD IN THE FUND TO ADMINISTER THIS ARTICLE 20.

9 **5-20-105. License required.** A PERSON SHALL NOT ACT AS A
10 STUDENT LOAN SERVICER, DIRECTLY OR INDIRECTLY, WITHOUT FIRST
11 OBTAINING A STUDENT LOAN SERVICING LICENSE FROM THE
12 ADMINISTRATOR PURSUANT TO THIS ARTICLE 20.

13 **5-20-106. Licensure of student loan servicers. (1) Automatic**
14 **issuance of license for federal student loan servicing contractors.**

15 (a) A PERSON SEEKING TO ACT WITHIN THIS STATE AS A STUDENT LOAN
16 SERVICER IS EXEMPT FROM THE APPLICATION PROCEDURES DESCRIBED IN
17 SUBSECTION (2) OF THIS SECTION UPON A DETERMINATION BY THE
18 ADMINISTRATOR THAT THE PERSON IS A PARTY TO A CONTRACT AWARDED
19 BY THE UNITED STATES SECRETARY OF EDUCATION UNDER 20 U.S.C. SEC.
20 1087f, AS AMENDED. THE ADMINISTRATOR SHALL PRESCRIBE THE
21 PROCEDURE TO DOCUMENT ELIGIBILITY FOR THE EXEMPTION.

22 (b) Automatic license. WITH REGARD TO A PERSON DEEMED
23 EXEMPT BY THIS SUBSECTION (1), THE ADMINISTRATOR SHALL:

24 (I) AUTOMATICALLY ISSUE A LICENSE UPON PAYMENT OF THE FEES
25 REQUIRED BY SECTION 5-20-107 (1)(a);

26 (II) AUTOMATICALLY ISSUE A RENEWAL LICENSE UPON PAYMENT
27 OF THE FEES REQUIRED BY SECTION 5-20-107 (1)(b); AND

1 (III) DEEM THE PERSON TO HAVE MET ALL REQUIREMENTS SET
2 FORTH IN SUBSECTION (2) OF THIS SECTION.

3 (c) Procedural exemptions. A PERSON ISSUED A LICENSE
4 PURSUANT TO THIS SUBSECTION (1) IS EXEMPT FROM SUBSECTIONS (3) TO
5 (9) AND (11) OF THIS SECTION. A PERSON ISSUED A LICENSE PURSUANT TO
6 THIS SUBSECTION (1) SHALL COMPLY WITH THE RECORD REQUIREMENTS IN
7 SUBSECTION (10) OF THIS SECTION EXCEPT TO THE EXTENT THAT THE
8 REQUIREMENTS ARE INCONSISTENT WITH FEDERAL LAW.

9 (d) Notice. A PERSON ISSUED A LICENSE PURSUANT TO THIS
10 SUBSECTION (1) SHALL PROVIDE THE ADMINISTRATOR WITH WRITTEN
11 NOTICE WITHIN SEVEN DAYS AFTER NOTIFICATION OF THE EXPIRATION,
12 REVOCAION, OR TERMINATION OF ANY CONTRACT AWARDED BY THE
13 UNITED STATES SECRETARY OF EDUCATION UNDER 20 U.S.C. SEC. 1087f.
14 THE PERSON HAS THIRTY DAYS AFTER NOTIFICATION TO SATISFY ALL
15 REQUIREMENTS ESTABLISHED UNDER SUBSECTION (2) OF THIS SECTION IN
16 ORDER TO CONTINUE TO ACT WITHIN THIS STATE AS A STUDENT LOAN
17 SERVICER. AT THE EXPIRATION OF THE THIRTY-DAY PERIOD, IF THE PERSON
18 SEEKING TO ACT WITHIN THIS STATE AS A STUDENT LOAN SERVICER HAS
19 NOT SATISFIED THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION,
20 THE ADMINISTRATOR SHALL SUMMARILY SUSPEND ANY LICENSE GRANTED
21 TO THE PERSON UNDER THIS SECTION IN ACCORDANCE WITH SECTION
22 24-4-104 (4); EXCEPT THAT THE FULL INVESTIGATION REQUIREMENT
23 SPECIFIED IN SECTION 24-4-104 (4)(a) DOES NOT APPLY.

24 (e) Preservation of authorities. WITH RESPECT TO STUDENT LOAN
25 SERVICING NOT CONDUCTED PURSUANT TO A CONTRACT AWARDED BY THE
26 UNITED STATES SECRETARY OF EDUCATION UNDER 20 U.S.C. SEC. 1087f.
27 NOTHING IN THIS SECTION PREVENTS THE ADMINISTRATOR FROM ISSUING,

1 OR FILING A CIVIL ACTION FOR, AN ORDER TO TEMPORARILY OR
2 PERMANENTLY PROHIBIT OR BAR ANY PERSON FROM ACTING AS A STUDENT
3 LOAN SERVICER OR VIOLATING APPLICABLE LAW.

4 (2) Other student loan servicers. (a) A PERSON SEEKING TO ACT
5 WITHIN THIS STATE AS A STUDENT LOAN SERVICER, OTHER THAN A PERSON
6 DEEMED EXEMPT BY THE ADMINISTRATOR PURSUANT TO SUBSECTION (1)
7 OF THIS SECTION, MUST APPLY TO THE ADMINISTRATOR FOR AN INITIAL
8 LICENSE IN THE FORM THE ADMINISTRATOR PRESCRIBES. THE APPLICATION
9 MUST BE ACCOMPANIED BY:

10 (I) A FINANCIAL STATEMENT PREPARED BY A CERTIFIED PUBLIC
11 ACCOUNTANT OR A PUBLIC ACCOUNTANT, A GENERAL PARTNER IF THE
12 APPLICANT IS A PARTNERSHIP, A CORPORATE OFFICER IF THE APPLICANT IS
13 A CORPORATION, OR A MEMBER DULY AUTHORIZED TO EXECUTE FINANCIAL
14 STATEMENTS IF THE APPLICANT IS A LIMITED LIABILITY COMPANY OR
15 ASSOCIATION;

16 (II) INFORMATION REGARDING THE HISTORY OF CRIMINAL
17 CONVICTIONS OF THE FOLLOWING:

18 (A) THE APPLICANT;

19 (B) PARTNERS OF THE APPLICANT, IF THE APPLICANT IS IN A
20 PARTNERSHIP;

21 (C) MEMBERS OF THE APPLICANT, IF THE APPLICANT IS A LIMITED
22 LIABILITY COMPANY OR ASSOCIATION; OR

23 (D) OFFICERS, DIRECTORS, AND PRINCIPAL EMPLOYEES OF THE
24 APPLICANT, IF THE APPLICANT IS A CORPORATION.

25 (b) THE INFORMATION SUBMITTED PURSUANT TO SUBSECTION
26 (2)(a)(II) OF THIS SECTION MUST BE SUFFICIENT, AS DETERMINED BY THE
27 ADMINISTRATOR, TO MAKE THE FINDINGS REQUIRED UNDER THIS SECTION.

1 (3) Investigation of applicant. (a) UPON THE FILING OF AN
2 APPLICATION FOR AN INITIAL LICENSE AND THE PAYMENT OF THE FEES FOR
3 LICENSING AND INVESTIGATION PURSUANT TO SECTION 5-20-107, THE
4 ADMINISTRATOR SHALL INVESTIGATE THE FINANCIAL CONDITION AND
5 RESPONSIBILITY, FINANCIAL AND BUSINESS EXPERIENCE, CHARACTER, AND
6 GENERAL FITNESS OF THE APPLICANT.

7 (b) THE ADMINISTRATOR MAY ISSUE A LICENSE PURSUANT TO THIS
8 SECTION IF THE ADMINISTRATOR FINDS THAT:

9 (I) THE APPLICANT'S FINANCIAL CONDITION IS SOUND;

10 (II) THE APPLICANT'S BUSINESS WILL BE CONDUCTED HONESTLY,
11 FAIRLY, EQUITABLY, CAREFULLY, AND EFFICIENTLY WITHIN THE PURPOSES
12 AND INTENT OF THIS ARTICLE 20 AND IN A MANNER COMMANDING THE
13 CONFIDENCE AND TRUST OF THE COMMUNITY;

14 (III) IF THE APPLICANT IS:

15 (A) AN INDIVIDUAL, THE INDIVIDUAL IS IN ALL RESPECTS
16 PROPERLY QUALIFIED AND OF GOOD CHARACTER;

17 (B) A PARTNERSHIP, EACH PARTNER IS IN ALL RESPECTS PROPERLY
18 QUALIFIED AND OF GOOD CHARACTER;

19 (C) A LIMITED LIABILITY COMPANY OR ASSOCIATION, EACH
20 MEMBER IS IN ALL RESPECTS PROPERLY QUALIFIED AND OF GOOD
21 CHARACTER; OR

22 (D) A CORPORATION, THE PRESIDENT, CHAIR OF THE EXECUTIVE
23 COMMITTEE, SENIOR OFFICER RESPONSIBLE FOR THE CORPORATION'S
24 BUSINESS, CHIEF FINANCIAL OFFICER OR ANY OTHER PERSON WHO
25 PERFORMS SIMILAR FUNCTIONS AS DETERMINED BY THE ADMINISTRATOR,
26 EACH DIRECTOR, EACH TRUSTEE, AND EACH SHAREHOLDER OWNING TEN
27 PERCENT OR MORE OF EACH CLASS OF THE SECURITIES OF THE

1 CORPORATION ARE IN ALL RESPECTS PROPERLY QUALIFIED AND OF GOOD
2 CHARACTER;

3 (IV) NO PERSON ACTING ON BEHALF OF THE APPLICANT
4 KNOWINGLY HAS MADE AN INCORRECT STATEMENT OF A MATERIAL FACT
5 IN THE APPLICATION OR IN ANY REPORT OR STATEMENT MADE PURSUANT
6 TO THIS ARTICLE 20; AND

7 (V) THE APPLICANT HAS MET ANY OTHER REQUIREMENTS AS
8 DETERMINED BY THE ADMINISTRATOR.

9 (4) **License expiration.** A LICENSE ISSUED PURSUANT TO THIS
10 SECTION EXPIRES EACH JANUARY 31 UNLESS RENEWED OR EARLIER
11 SURRENDERED, SUSPENDED, OR REVOKED PURSUANT TO THIS ARTICLE 20.
12 NO LATER THAN FIFTEEN DAYS AFTER A LICENSEE CEASES TO ENGAGE IN
13 THE BUSINESS OF SERVICING IN THIS STATE FOR ANY REASON, INCLUDING
14 A BUSINESS DECISION TO TERMINATE OPERATIONS IN THIS STATE, LICENSE
15 REVOCATION, BANKRUPTCY, OR VOLUNTARY DISSOLUTION, THE LICENSEE
16 SHALL PROVIDE WRITTEN NOTICE OF SURRENDER TO THE ADMINISTRATOR
17 AND SHALL SURRENDER TO THE ADMINISTRATOR ITS LICENSE FOR EACH
18 LOCATION IN WHICH THE LICENSEE HAS CEASED TO ENGAGE IN SERVICING.
19 THE WRITTEN NOTICE OF SURRENDER MUST IDENTIFY THE LOCATION
20 WHERE THE RECORDS OF THE LICENSEE WILL BE STORED AND THE NAME,
21 ADDRESS, AND TELEPHONE NUMBER OF A PERSON AUTHORIZED TO PROVIDE
22 ACCESS TO THE RECORDS. THE SURRENDER OF A LICENSE DOES NOT
23 REDUCE OR ELIMINATE THE LICENSEE'S CIVIL OR CRIMINAL LIABILITY
24 ARISING FROM ACTS OR OMISSIONS OCCURRING BEFORE THE SURRENDER
25 OF THE LICENSE, INCLUDING ANY ADMINISTRATIVE ACTIONS UNDERTAKEN
26 BY THE ADMINISTRATOR TO REVOKE OR SUSPEND A LICENSE, ASSESS A
27 CIVIL PENALTY, ORDER RESTITUTION, OR EXERCISE ANY OTHER AUTHORITY

1 PROVIDED TO THE ADMINISTRATOR.

2 (5) License renewal. (a) A LICENSE ISSUED PURSUANT TO THIS
3 SECTION MAY BE RENEWED FOR THE ENSUING TWELVE-MONTH PERIOD
4 UPON THE FILING OF AN APPLICATION CONTAINING ALL REQUIRED RECORDS
5 AND FEES, INCLUDING RENEWAL FEES AS ESTABLISHED BY THE
6 ADMINISTRATOR IN ACCORDANCE WITH SECTION 5-20-107. A RENEWAL
7 APPLICATION MUST BE FILED ON OR BEFORE JANUARY 31 OF THE YEAR IN
8 WHICH THE LICENSE EXPIRES. THE ADMINISTRATOR MAY ESTABLISH A
9 LATE FEE FOR ANY RENEWAL APPLICATIONS SUBMITTED AFTER JANUARY
10 31.

11 (b) IF AN APPLICATION FOR A RENEWAL LICENSE HAS BEEN FILED
12 WITH THE ADMINISTRATOR ON OR BEFORE THE DATE THE LICENSE EXPIRES,
13 THE LICENSE SOUGHT TO BE RENEWED CONTINUES IN EFFECT UNTIL THE
14 ISSUANCE BY THE ADMINISTRATOR OF THE RENEWAL LICENSE APPLIED FOR
15 OR UNTIL THE ADMINISTRATOR HAS NOTIFIED THE LICENSEE IN WRITING OF
16 THE ADMINISTRATOR'S REFUSAL TO ISSUE THE RENEWAL LICENSE
17 TOGETHER WITH THE GROUNDS UPON WHICH THE REFUSAL IS BASED.

18 (c) THE ADMINISTRATOR MAY REFUSE TO ISSUE A RENEWAL
19 LICENSE ON ANY GROUND ON WHICH THE ADMINISTRATOR MAY REFUSE TO
20 ISSUE AN INITIAL LICENSE.

21 (6) Dishonored check. IF A CHECK FILED WITH THE
22 ADMINISTRATOR TO PAY A LICENSE, INVESTIGATION, OR RENEWAL FEE
23 UNDER THIS SECTION IS DISHONORED, THE ADMINISTRATOR SHALL
24 SUMMARILY SUSPEND THE LICENSE OR THE RENEWAL LICENSE THAT HAS
25 BEEN ISSUED BUT IS NOT YET EFFECTIVE IN ACCORDANCE WITH SECTION
26 24-4-104 (4); EXCEPT THAT THE FULL INVESTIGATION REQUIREMENT
27 SPECIFIED IN SECTION 24-4-104 (4)(a) DOES NOT APPLY. THE

1 ADMINISTRATOR SHALL GIVE THE LICENSEE NOTICE OF THE SUMMARY
2 SUSPENSION PENDING PROCEEDINGS FOR REVOCATION OR REFUSAL TO
3 RENEW AND AN OPPORTUNITY FOR A HEARING ON THE ACTIONS IN
4 ACCORDANCE WITH SECTION 5-20-113.

5 **(7) Update application information.** AN APPLICANT OR LICENSEE
6 UNDER THIS SECTION SHALL NOTIFY THE ADMINISTRATOR, IN WRITING, OF
7 ANY CHANGE IN THE INFORMATION PROVIDED IN ITS INITIAL APPLICATION
8 FOR A LICENSE OR ITS MOST RECENT RENEWAL APPLICATION FOR A
9 LICENSE, AS APPLICABLE, NOT LATER THAN TEN BUSINESS DAYS AFTER THE
10 OCCURRENCE OF THE EVENT THAT RESULTS IN THE CHANGE.

11 **(8) Incomplete application.** THE ADMINISTRATOR MAY CONSIDER
12 AN APPLICATION FOR A LICENSE UNDER THIS SECTION ABANDONED IF THE
13 APPLICANT FAILS TO RESPOND TO ANY REQUEST FOR INFORMATION
14 REQUIRED UNDER THIS ARTICLE 20 OR ANY RULES ADOPTED PURSUANT TO
15 THIS ARTICLE 20, AS LONG AS THE ADMINISTRATOR NOTIFIES THE
16 APPLICANT, IN WRITING, THAT THE APPLICATION WILL BE CONSIDERED
17 ABANDONED IF THE APPLICANT FAILS TO SUBMIT THE INFORMATION
18 WITHIN SIXTY DAYS AFTER THE DATE ON WHICH THE REQUEST FOR
19 INFORMATION WAS MADE. ABANDONMENT OF AN APPLICATION PURSUANT
20 TO THIS SUBSECTION (8) DOES NOT PRECLUDE THE APPLICANT FROM
21 SUBMITTING A NEW APPLICATION FOR A LICENSE UNDER THIS ARTICLE 20.

22 **(9) Change of license notification.** A LICENSEE UNDER THIS
23 SECTION SHALL NOT ACT WITHIN THIS STATE AS A STUDENT LOAN
24 SERVICER UNDER ANY NAME OR AT ANY PLACE OF BUSINESS OTHER THAN
25 THOSE NAMED IN THE LICENSE. A LICENSEE SHALL GIVE PRIOR WRITTEN
26 NOTICE TO THE ADMINISTRATOR OF A CHANGE OF BUSINESS LOCATION. A
27 LICENSEE SHALL NOT OPERATE MORE THAN ONE PLACE OF BUSINESS UNDER

1 THE SAME LICENSE, BUT THE ADMINISTRATOR MAY ISSUE MORE THAN ONE
2 LICENSE TO A LICENSEE THAT COMPLIES WITH THIS ARTICLE 20 AS TO EACH
3 LICENSE. A LICENSE IS NOT TRANSFERABLE OR ASSIGNABLE.

4 **(10) Records retention - records request.** A STUDENT LOAN
5 SERVICER SHALL MAINTAIN ADEQUATE RECORDS OF EACH STUDENT
6 EDUCATION LOAN TRANSACTION FOR NOT LESS THAN TWO YEARS AFTER
7 THE FINAL PAYMENT ON THE STUDENT EDUCATION LOAN OR THE
8 ASSIGNMENT OF THE STUDENT EDUCATION LOAN, WHICHEVER OCCURS
9 FIRST, OR EXCEPT AS OTHERWISE REQUIRED BY FEDERAL LAW, A FEDERAL
10 STUDENT EDUCATION LOAN AGREEMENT, OR A CONTRACT BETWEEN THE
11 FEDERAL GOVERNMENT AND A LICENSEE. UPON REQUEST BY THE
12 ADMINISTRATOR, A STUDENT LOAN SERVICER SHALL MAKE THE RECORDS
13 AVAILABLE OR SHALL SEND THE RECORDS TO THE ADMINISTRATOR BY
14 REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY ANY
15 EXPRESS DELIVERY CARRIER THAT PROVIDES A DATED DELIVERY RECEIPT,
16 NOT LATER THAN FIVE BUSINESS DAYS AFTER REQUESTED BY THE
17 ADMINISTRATOR. UPON A LICENSEE'S REQUEST, THE ADMINISTRATOR MAY
18 GRANT THE LICENSEE ADDITIONAL TIME TO MAKE THE RECORDS
19 AVAILABLE OR TO SEND THE RECORDS TO THE ADMINISTRATOR.

20 **(11) License suspension and revocation - refusal to renew.**
21 **(a) THE ADMINISTRATOR MAY SUSPEND, REVOKE, ANNUL, LIMIT, MODIFY,**
22 **OR REFUSE TO RENEW A LICENSE ISSUED PURSUANT TO SUBSECTION (2) OF**
23 **THIS SECTION OR TAKE ANY OTHER ACTION IN ACCORDANCE WITH THIS**
24 **ARTICLE 20 IF THE ADMINISTRATOR FINDS ONE OR MORE OF THE**
25 **FOLLOWING:**

26 **(I) THE LICENSEE HAS VIOLATED ANY PROVISION OF THIS ARTICLE**
27 **20 OR ANY RULE LAWFULLY ADOPTED OR ORDER LAWFULLY ISSUED**

1 PURSUANT TO AND WITHIN THE AUTHORITY OF THIS ARTICLE 20; OR

2 (II) ANY FACT OR CONDITION EXISTS THAT, IF IT HAD EXISTED AT
3 THE TIME OF THE ORIGINAL APPLICATION FOR THE LICENSE, CLEARLY
4 WOULD HAVE WARRANTED A DENIAL OF THE LICENSE.

5 (b) AN ABATEMENT OF THE LICENSE FEE MAY NOT BE MADE IF THE
6 LICENSE IS SURRENDERED, REVOKED, OR SUSPENDED.

7 **5-20-107. License and investigation fees.** (1) A PERSON
8 APPLYING FOR LICENSURE UNDER SECTION 5-20-106(1) OR (2) SHALL PAY
9 THE FOLLOWING NONREFUNDABLE FEES ESTABLISHED BY THE
10 ADMINISTRATOR:

11 (a) INITIAL LICENSE FEE OF AT LEAST ONE THOUSAND DOLLARS;

12 (b) ANNUAL RENEWAL FEE OF AT LEAST ONE THOUSAND DOLLARS;

13 AND

14 (c) INVESTIGATION FEE.

15 (2) THE ADMINISTRATOR SHALL DETERMINE THE AMOUNT OF THE
16 FEES REQUIRED IN THIS SECTION AND MAY PERIODICALLY REDUCE OR
17 INCREASE THE AMOUNT OF ONE OR MORE OF THE FEES IF NECESSARY
18 PURSUANT TO SECTION 24-75-402 (3) AND (4), TO REDUCE THE
19 UNCOMMITTED RESERVES OF THE FUND CREATED IN SECTION 5-20-104(3).
20 THE FUND IS SUBJECT TO THE MAXIMUM RESERVE ESTABLISHED IN
21 SECTION 24-75-402.

22 **5-20-108. Affirmative acts required of student loan servicers**
23 **- definitions.** (1) EXCEPT AS OTHERWISE PROVIDED IN FEDERAL LAW,
24 FEDERAL STUDENT EDUCATION LOAN AGREEMENTS, OR A CONTRACT
25 BETWEEN THE FEDERAL GOVERNMENT AND A STUDENT LOAN SERVICER, A
26 STUDENT LOAN SERVICER SHALL TAKE THE ACTIONS SPECIFIED IN THIS
27 SECTION.

1 (2) (a) A STUDENT LOAN SERVICER SHALL RESPOND TO A WRITTEN
2 INQUIRY FROM A STUDENT LOAN BORROWER, THE REPRESENTATIVE OF A
3 STUDENT LOAN BORROWER, OR THE STUDENT LOAN OMBUDSPERSON
4 WITHIN TEN BUSINESS DAYS AFTER RECEIPT OF THE REQUEST AND, WITHIN
5 THIRTY BUSINESS DAYS AFTER RECEIPT OF THE REQUEST, PROVIDE
6 INFORMATION RELATING TO THE REQUEST AND, IF APPLICABLE, THE
7 ACTION THE STUDENT LOAN SERVICER WILL TAKE TO CORRECT THE
8 ACCOUNT OR AN EXPLANATION FOR THE STUDENT LOAN SERVICER'S
9 POSITION THAT THE BORROWER'S ACCOUNT IS CORRECT.

10 (b) THE THIRTY-DAY PERIOD DESCRIBED IN SUBSECTION (2)(a) OF
11 THIS SECTION MAY BE EXTENDED FOR NOT MORE THAN FIFTEEN DAYS IF,
12 BEFORE THE END OF THE THIRTY-DAY PERIOD, THE STUDENT LOAN
13 SERVICER NOTIFIES THE BORROWER, THE BORROWER'S REPRESENTATIVE,
14 OR THE OMBUDSPERSON, AS APPLICABLE, OF THE EXTENSION AND THE
15 REASONS FOR THE DELAY IN RESPONDING.

16 (c) AFTER RECEIPT OF A WRITTEN REQUEST RELATED TO A DISPUTE
17 ON A BORROWER'S PAYMENT ON A STUDENT EDUCATION LOAN, A STUDENT
18 LOAN SERVICER SHALL NOT, FOR THE SIXTY DAYS FOLLOWING RECEIPT,
19 FURNISH ADVERSE INFORMATION TO A CONSUMER REPORTING AGENCY
20 REGARDING A PAYMENT THAT IS THE SUBJECT OF THE WRITTEN INQUIRY.

21 (3) (a) EXCEPT AS PROVIDED IN FEDERAL LAW OR REQUIRED BY A
22 STUDENT LOAN AGREEMENT, A STUDENT LOAN SERVICER SHALL INQUIRE
23 OF A BORROWER HOW TO APPLY AN OVERPAYMENT TO A STUDENT
24 EDUCATION LOAN. A BORROWER'S DIRECTION ON HOW TO APPLY AN
25 OVERPAYMENT TO A STUDENT EDUCATION LOAN STAYS IN EFFECT FOR ANY
26 FUTURE OVERPAYMENTS DURING THE TERM OF A STUDENT EDUCATION
27 LOAN UNTIL THE BORROWER PROVIDES DIFFERENT DIRECTIONS.

1 (b) FOR PURPOSES OF THIS SUBSECTION (3), "OVERPAYMENT"
2 MEANS A PAYMENT ON A STUDENT EDUCATION LOAN IN EXCESS OF THE
3 MONTHLY AMOUNT DUE FROM A BORROWER ON A STUDENT EDUCATION
4 LOAN, ALSO COMMONLY REFERRED TO AS A PREPAYMENT.

5 (4) (a) A STUDENT LOAN SERVICER SHALL APPLY PARTIAL
6 PAYMENTS IN A MANNER THAT MINIMIZES LATE FEES AND NEGATIVE
7 CREDIT REPORTING. WHERE LOANS ON A BORROWER'S STUDENT LOAN
8 ACCOUNT HAVE AN EQUAL LEVEL OF DELINQUENCY, A STUDENT LOAN
9 SERVICER SHALL APPLY PARTIAL PAYMENTS TO SATISFY AS MANY
10 INDIVIDUAL LOAN PAYMENTS AS POSSIBLE ON A BORROWER'S ACCOUNT.

11 (b) FOR PURPOSES OF THIS SUBSECTION (4), "PARTIAL PAYMENT"
12 MEANS A PAYMENT ON A STUDENT LOAN ACCOUNT THAT CONTAINS
13 MULTIPLE INDIVIDUAL LOANS IN AN AMOUNT LESS THAN THE AMOUNT
14 NECESSARY TO SATISFY THE OUTSTANDING PAYMENT DUE ON ALL LOANS
15 IN THE STUDENT LOAN ACCOUNT, ALSO COMMONLY REFERRED TO AS AN
16 UNDERPAYMENT.

17 (5) IN THE EVENT OF THE SALE, ASSIGNMENT, OR OTHER TRANSFER
18 OF THE SERVICING OF A STUDENT EDUCATION LOAN THAT RESULTS IN A
19 CHANGE IN THE IDENTITY OF THE PERSON TO WHOM A STUDENT LOAN
20 BORROWER IS REQUIRED TO SEND PAYMENTS OR DIRECT ANY
21 COMMUNICATION CONCERNING THE STUDENT EDUCATION LOAN, THE
22 FOLLOWING PROVISIONS APPLY:

23 (a) AS A CONDITION OF A SALE, AN ASSIGNMENT, OR ANY OTHER
24 TRANSFER OF THE SERVICING OF A STUDENT EDUCATION LOAN, A STUDENT
25 LOAN SERVICER SHALL REQUIRE THE NEW STUDENT LOAN SERVICER TO
26 HONOR ALL BENEFITS ORIGINALLY REPRESENTED AS AVAILABLE TO A
27 STUDENT LOAN BORROWER DURING THE REPAYMENT OF THE STUDENT

1 EDUCATION LOAN AND PRESERVE THE AVAILABILITY OF THE BENEFITS,
2 INCLUDING ANY BENEFITS FOR WHICH THE STUDENT LOAN BORROWER HAS
3 NOT YET QUALIFIED.

4 (b) A STUDENT LOAN SERVICER SHALL TRANSFER TO THE NEW
5 STUDENT LOAN SERVICER ALL RECORDS REGARDING THE STUDENT LOAN
6 BORROWER, THE ACCOUNT OF THE STUDENT LOAN BORROWER, AND THE
7 STUDENT EDUCATION LOAN OF THE STUDENT LOAN BORROWER.

8 (c) THE RECORDS REQUIRED UNDER SUBSECTION (5)(b) OF THIS
9 SECTION INCLUDE THE REPAYMENT STATUS OF THE STUDENT LOAN
10 BORROWER AND ANY BENEFITS ASSOCIATED WITH THE STUDENT
11 EDUCATION LOAN OF THE STUDENT LOAN BORROWER.

12 (d) THE STUDENT LOAN SERVICER SHALL COMPLETE THE TRANSFER
13 OF RECORDS REQUIRED UNDER SUBSECTION (5)(b) OF THIS SECTION WITHIN
14 FORTY-FIVE DAYS AFTER THE SALE, ASSIGNMENT, OR OTHER TRANSFER OF
15 THE SERVICING OF A STUDENT EDUCATION LOAN.

16 (e) THE PARTIES SHALL COMPLETE THE SALE, ASSIGNMENT, OR
17 OTHER TRANSFER OF THE SERVICING OF A STUDENT EDUCATION LOAN AT
18 LEAST SEVEN DAYS BEFORE THE NEXT PAYMENT ON THE LOAN IS DUE.

19 (6) A STUDENT LOAN SERVICER THAT SERVICES A STUDENT
20 EDUCATION LOAN SHALL ADOPT POLICIES AND PROCEDURES TO VERIFY
21 THAT THE STUDENT LOAN SERVICER HAS RECEIVED ALL RECORDS
22 REGARDING THE STUDENT LOAN BORROWER, THE ACCOUNT OF THE
23 STUDENT LOAN BORROWER, AND THE STUDENT EDUCATION LOAN OF THE
24 STUDENT LOAN BORROWER, INCLUDING THE REPAYMENT STATUS OF THE
25 STUDENT LOAN BORROWER AND ANY BENEFITS ASSOCIATED WITH THE
26 STUDENT EDUCATION LOAN OF THE STUDENT LOAN BORROWER.

27 **5-20-109. Prohibited acts of student loan servicers. (1) A**

- 1 STUDENT LOAN SERVICER SHALL NOT:
- 2 (a) DIRECTLY OR INDIRECTLY EMPLOY A SCHEME, A DEVICE, OR
3 ARTIFICE TO DEFRAUD OR MISLEAD STUDENT LOAN BORROWERS;
- 4 (b) ENGAGE IN AN UNFAIR OR DECEPTIVE PRACTICE TOWARD ANY
5 PERSON OR MISREPRESENT OR OMIT ANY MATERIAL INFORMATION IN
6 CONNECTION WITH THE SERVICING OF A STUDENT EDUCATION LOAN,
7 INCLUDING MISREPRESENTING THE AMOUNT, NATURE, OR TERMS OF ANY
8 FEE OR PAYMENT DUE OR CLAIMED TO BE DUE ON A STUDENT EDUCATION
9 LOAN, THE TERMS AND CONDITIONS OF THE LOAN AGREEMENT, OR THE
10 STUDENT LOAN BORROWER'S OBLIGATIONS UNDER THE LOAN;
- 11 (c) OBTAIN PROPERTY BY FRAUD OR MISREPRESENTATION;
- 12 (d) MISAPPLY STUDENT EDUCATION LOAN PAYMENTS TO THE
13 OUTSTANDING BALANCE OF A STUDENT EDUCATION LOAN;
- 14 (e) PROVIDE INACCURATE INFORMATION TO A CONSUMER
15 REPORTING AGENCY;
- 16 (f) FAIL TO REPORT BOTH THE FAVORABLE AND UNFAVORABLE
17 PAYMENT HISTORY OF A STUDENT LOAN BORROWER TO A CONSUMER
18 REPORTING AGENCY AT LEAST ANNUALLY IF THE STUDENT LOAN SERVICER
19 REGULARLY REPORTS INFORMATION TO A CONSUMER REPORTING AGENCY;
- 20 (g) REFUSE TO COMMUNICATE WITH AN AUTHORIZED
21 REPRESENTATIVE OF A STUDENT LOAN BORROWER WHO PROVIDES A
22 WRITTEN AUTHORIZATION SIGNED BY THE STUDENT LOAN BORROWER;
23 EXCEPT THAT THE STUDENT LOAN SERVICER MAY ADOPT PROCEDURES
24 REASONABLY RELATED TO VERIFYING THAT THE REPRESENTATIVE IS IN
25 FACT AUTHORIZED TO ACT ON BEHALF OF THE STUDENT LOAN BORROWER;
- 26 (h) MAKE ANY FALSE STATEMENT OR OMIT ANY MATERIAL FACT
27 IN CONNECTION WITH INFORMATION OR REPORTS FILED WITH A

1 GOVERNMENTAL AGENCY OR IN CONNECTION WITH AN INVESTIGATION
2 CONDUCTED BY THE ADMINISTRATOR OR ANOTHER GOVERNMENTAL
3 AGENCY; OR

4 (i) EXCEPT AS OTHERWISE PROVIDED IN FEDERAL LAW, FEDERAL
5 STUDENT LOAN AGREEMENTS, OR A CONTRACT BETWEEN THE FEDERAL
6 GOVERNMENT AND A STUDENT LOAN SERVICER, FAIL TO PROPERLY
7 EVALUATE A STUDENT LOAN BORROWER FOR AN INCOME-BASED OR OTHER
8 STUDENT LOAN REPAYMENT PROGRAM OR FOR ELIGIBILITY FOR A PUBLIC
9 SERVICE LOAN FORGIVENESS PROGRAM BEFORE PLACING THE STUDENT
10 LOAN BORROWER IN FORBEARANCE OR DEFAULT, IF AN INCOME-BASED
11 REPAYMENT OR OTHER PROGRAM IS AVAILABLE TO THE STUDENT LOAN
12 BORROWER.

13 **5-20-110. Powers and duties of the administrator - rules.**

14 (1) THE ADMINISTRATOR MAY CONDUCT INVESTIGATIONS AND
15 EXAMINATIONS AS FOLLOWS:

16 (a) FOR PURPOSES OF INITIAL LICENSING, LICENSE RENEWAL,
17 LICENSE SUSPENSION, LICENSE REVOCATION OR TERMINATION, OR
18 GENERAL OR SPECIFIC INQUIRY OR INVESTIGATION TO DETERMINE
19 COMPLIANCE WITH THIS ARTICLE 20, THE ADMINISTRATOR MAY ACCESS,
20 RECEIVE, AND USE ANY RECORDS OR INFORMATION BELONGING TO A
21 LICENSEE OR PERSON UNDER EXAMINATION, INCLUDING CRIMINAL, CIVIL,
22 AND ADMINISTRATIVE HISTORY INFORMATION; PERSONAL HISTORY AND
23 EXPERIENCE INFORMATION, INCLUDING INDEPENDENT CREDIT REPORTS
24 OBTAINED FROM A CONSUMER REPORTING AGENCY DESCRIBED IN SECTION
25 603 (p) OF THE FEDERAL "FAIR CREDIT REPORTING ACT", 15 U.S.C. SEC.
26 1681a, AS AMENDED; AND ANY OTHER RECORDS OR INFORMATION THE
27 ADMINISTRATOR CONSIDERS RELEVANT TO THE INQUIRY OR

1 INVESTIGATION REGARDLESS OF THE LOCATION, POSSESSION, CONTROL, OR
2 CUSTODY OF THE RECORDS OR INFORMATION.

3 (b) FOR THE PURPOSES OF INVESTIGATING VIOLATIONS OR
4 COMPLAINTS ARISING UNDER THIS ARTICLE 20 OR FOR THE PURPOSES OF
5 EXAMINATION, THE ADMINISTRATOR MAY REVIEW, INVESTIGATE, OR
6 EXAMINE ANY LICENSEE OR PERSON SUBJECT TO THIS ARTICLE 20 AS OFTEN
7 AS NECESSARY IN ORDER TO CARRY OUT THE PURPOSES OF THIS ARTICLE
8 20. THE ADMINISTRATOR MAY DIRECT, SUBPOENA, OR ORDER THE
9 ATTENDANCE OF AND EXAMINE UNDER OATH ANY PERSON WHOSE
10 TESTIMONY MAY BE REQUIRED ABOUT THE STUDENT EDUCATION LOAN OR
11 THE BUSINESS OR SUBJECT MATTER OF AN EXAMINATION OR
12 INVESTIGATION AND MAY DIRECT, SUBPOENA, OR ORDER THE PERSON TO
13 PRODUCE RECORDS THE ADMINISTRATOR CONSIDERS RELEVANT TO THE
14 INQUIRY.

15 (c) (I) IN MAKING AN EXAMINATION OR INVESTIGATION
16 AUTHORIZED BY THIS SECTION, THE ADMINISTRATOR MAY CONTROL
17 ACCESS TO ANY RECORDS OF THE LICENSEE OR PERSON UNDER
18 EXAMINATION OR INVESTIGATION. THE ADMINISTRATOR MAY TAKE
19 POSSESSION OF THE RECORDS OR PLACE A PERSON IN EXCLUSIVE CHARGE
20 OF THE RECORDS IN THE PLACE WHERE THEY ARE USUALLY KEPT.

21 (II) DURING THE PERIOD OF ADMINISTRATOR CONTROL PURSUANT
22 TO THIS SUBSECTION (1)(c), A PERSON MAY NOT REMOVE OR ATTEMPT TO
23 REMOVE ANY OF THE RECORDS EXCEPT PURSUANT TO A COURT ORDER OR
24 WITH THE CONSENT OF THE ADMINISTRATOR. UNLESS THE ADMINISTRATOR
25 HAS REASONABLE GROUNDS TO BELIEVE THAT THE RECORDS OF THE
26 LICENSEE OR PERSON HAVE BEEN, OR ARE AT RISK OF BEING, ALTERED OR
27 DESTROYED FOR PURPOSES OF CONCEALING A VIOLATION OF THIS ARTICLE

1 20, THE LICENSEE OR OWNER OF THE RECORDS MAY HAVE ACCESS TO THE
2 RECORDS AS NECESSARY TO CONDUCT ITS ORDINARY BUSINESS AFFAIRS.

3 (2) IN ORDER TO CARRY OUT THE PURPOSES OF THIS SECTION, THE
4 ADMINISTRATOR MAY:

5 (a) RETAIN ATTORNEYS, ACCOUNTANTS, OR OTHER PROFESSIONALS
6 AND SPECIALISTS AS EXAMINERS, AUDITORS, OR INVESTIGATORS TO
7 CONDUCT OR ASSIST IN THE CONDUCT OF EXAMINATIONS OR
8 INVESTIGATIONS;

9 (b) ENTER INTO AGREEMENTS OR RELATIONSHIPS WITH OTHER
10 GOVERNMENT OFFICIALS OR REGULATORY ASSOCIATIONS IN ORDER TO
11 IMPROVE EFFICIENCIES AND REDUCE REGULATORY BURDEN BY SHARING
12 RESOURCES, STANDARDIZED OR UNIFORM METHODS OR PROCEDURES, AND
13 RECORDS OR INFORMATION OBTAINED UNDER THIS SECTION;

14 (c) USE, HIRE, CONTRACT FOR, OR EMPLOY PUBLICLY OR
15 PRIVATELY AVAILABLE ANALYTICAL SYSTEMS, METHODS, OR SOFTWARE
16 TO EXAMINE OR INVESTIGATE THE LICENSEE OR PERSON SUBJECT TO THIS
17 ARTICLE 20;

18 (d) ACCEPT AND RELY ON EXAMINATION OR INVESTIGATION
19 REPORTS MADE BY OTHER GOVERNMENT OFFICIALS WITHIN OR OUTSIDE
20 THIS STATE; AND

21 (e) ACCEPT AUDIT REPORTS MADE BY AN INDEPENDENT CERTIFIED
22 PUBLIC ACCOUNTANT OF THE LICENSEE OR PERSON SUBJECT TO THIS
23 ARTICLE 20 IN THE COURSE OF THAT PART OF THE EXAMINATION COVERING
24 THE SAME GENERAL SUBJECT MATTER AS THE AUDIT AND MAY
25 INCORPORATE THE AUDIT REPORT IN A REPORT OF EXAMINATION, REPORT
26 OF INVESTIGATION, OR OTHER WRITING OF THE ADMINISTRATOR.

27 (3) A PERSON SUBJECT TO INVESTIGATION OR EXAMINATION UNDER

1 THIS SECTION SHALL NOT KNOWINGLY WITHHOLD, ABSTRACT, REMOVE,
2 MUTILATE, OR DESTROY ANY RECORDS OR OTHER INFORMATION RELATING
3 TO INFORMATION REGULATED UNDER THIS ARTICLE 20.

4 (4) WHENEVER IT APPEARS TO THE ADMINISTRATOR THAT A
5 PERSON HAS VIOLATED, IS VIOLATING, OR IS ABOUT TO VIOLATE A
6 PROVISION OF THIS ARTICLE 20 OR A RULE ADOPTED PURSUANT TO THIS
7 ARTICLE 20 OR THAT A LICENSEE OR AN OWNER, DIRECTOR, OFFICER,
8 MEMBER, PARTNER, SHAREHOLDER, TRUSTEE, EMPLOYEE, OR AGENT OF
9 THE LICENSEE HAS COMMITTED FRAUD, ENGAGED IN DISHONEST
10 ACTIVITIES, OR MADE A MISREPRESENTATION, THE ADMINISTRATOR MAY
11 TAKE ACTION AGAINST THE PERSON OR LICENSEE IN ACCORDANCE WITH
12 THIS ARTICLE 20.

13 (5) THE ADMINISTRATOR SHALL ADOPT RULES AS NECESSARY TO
14 IMPLEMENT THIS ARTICLE 20.

15 **5-20-111. Compliance with federal law.** A STUDENT LOAN
16 SERVICER SHALL COMPLY WITH ALL APPLICABLE FEDERAL LAWS AND
17 REGULATIONS RELATING TO SERVICING, INCLUDING THE FEDERAL "TRUTH
18 IN LENDING ACT", 15 U.S.C. SEC. 1601 TO 1667f, AS AMENDED, AND THE
19 REGULATIONS ADOPTED PURSUANT TO THAT ACT. IN ADDITION TO ANY
20 OTHER REMEDIES PROVIDED BY LAW, A VIOLATION OF THAT ACT OR
21 REGULATIONS ADOPTED PURSUANT TO THAT ACT IS A VIOLATION OF THIS
22 ARTICLE 20 AND A BASIS UPON WHICH THE ADMINISTRATOR MAY TAKE
23 ENFORCEMENT ACTION PURSUANT TO THIS ARTICLE 20.

24 **5-20-112. Civil action.** (1) A VIOLATION OF THIS ARTICLE 20 IS A
25 DECEPTIVE TRADE PRACTICE WITHIN THE MEANING OF SECTION 6-1-105.

26 (2) A STUDENT LOAN SERVICER WHO FAILS TO COMPLY WITH ANY
27 REQUIREMENT IMPOSED UNDER THIS ARTICLE 20 WITH RESPECT TO A

1 STUDENT LOAN BORROWER IS LIABLE IN AN AMOUNT EQUAL TO THE SUM
2 OF:

3 (a) ANY ACTUAL DAMAGES SUSTAINED BY THE STUDENT LOAN
4 BORROWER AS A RESULT OF THE FAILURE;

5 (b) A MONETARY AWARD EQUAL TO THREE TIMES THE TOTAL
6 AMOUNT THE STUDENT LOAN SERVICER COLLECTED FROM THE STUDENT
7 LOAN BORROWER IN VIOLATION OF THIS ARTICLE 20;

8 (c) PUNITIVE DAMAGES AS THE COURT MAY ALLOW; AND

9 (d) IN THE CASE OF ANY SUCCESSFUL ACTION BY A STUDENT LOAN
10 BORROWER TO ENFORCE THE LIABILITY SET OUT IN THIS SECTION, THE
11 COSTS OF THE ACTION, TOGETHER WITH REASONABLE ATTORNEY FEES AS
12 DETERMINED BY THE COURT.

13 (3) THE REMEDIES PROVIDED IN THIS SECTION ARE NOT THE
14 EXCLUSIVE REMEDIES AVAILABLE TO A STUDENT LOAN BORROWER.

15 **5-20-113. Application of administrative procedures -**
16 **provisions.** EXCEPT AS OTHERWISE PROVIDED, SECTIONS 24-4-102 TO
17 24-4-106 APPLY TO AND GOVERN ALL RULES PROMULGATED AND ALL
18 ADMINISTRATIVE ACTION TAKEN BY THE ADMINISTRATOR PURSUANT TO
19 THIS ARTICLE 20; EXCEPT THAT SECTION 24-4-104 (3) DOES NOT APPLY TO
20 ANY SUCH ACTION.

21 **5-20-114. Administrative enforcement orders.** (1) AFTER
22 NOTICE AND HEARING, THE ADMINISTRATOR MAY ORDER A STUDENT LOAN
23 SERVICER OR A PERSON ACTING IN THE STUDENT LOAN SERVICER'S BEHALF
24 TO CEASE AND DESIST FROM ENGAGING IN VIOLATIONS OF THIS ARTICLE 20
25 OR ANY RULE LAWFULLY ADOPTED OR ORDER LAWFULLY ISSUED
26 PURSUANT TO THIS ARTICLE 20. THE ORDER ISSUED BY THE
27 ADMINISTRATOR MAY ALSO REQUIRE THE STUDENT LOAN SERVICER OR

1 PERSON TO MAKE REFUNDS TO PERSONS OF UNLAWFUL CHARGES UNDER
2 THIS ARTICLE 20 AND AN ADMINISTRATIVE PENALTY OF UP TO ONE
3 THOUSAND FIVE HUNDRED DOLLARS PER VIOLATION, ALL OR PART OF
4 WHICH MAY BE SPECIFICALLY DESIGNATED FOR CONSUMER AND CREDITOR
5 EDUCATIONAL PURPOSES.

6 (2) A RESPONDENT AGGRIEVED BY AN ORDER OF THE
7 ADMINISTRATOR MAY OBTAIN JUDICIAL REVIEW OF THE ORDER IN THE
8 COLORADO COURT OF APPEALS. THE ADMINISTRATOR MAY OBTAIN AN
9 ORDER OF THE COURT FOR ENFORCEMENT OF THE ADMINISTRATOR'S ORDER
10 IN THE DISTRICT COURT UNDER SECTION 24-4-106. ALL PROCEEDINGS
11 UNDER THIS SECTION ARE GOVERNED BY SECTIONS 24-4-105 AND
12 24-4-106.

13 **5-20-115. Assurance of discontinuance.** IF IT IS CLAIMED THAT
14 A PERSON HAS VIOLATED THIS ARTICLE 20, THE ADMINISTRATOR MAY
15 ACCEPT AN ASSURANCE IN WRITING THAT THE PERSON WILL NOT ENGAGE
16 IN THE CONDUCT IN THE FUTURE. THE ASSURANCE MAY ALSO REQUIRE THE
17 PERSON TO MAKE REFUNDS TO PERSONS OF UNLAWFUL CHARGES UNDER
18 THIS ARTICLE 20, PAY A PENALTY AUTHORIZED IN SECTION 5-20-114 (1),
19 ALL OR PART OF WHICH MAY BE SPECIFICALLY DESIGNATED FOR
20 CONSUMER AND CREDITOR EDUCATIONAL PURPOSES, AND REIMBURSE THE
21 ADMINISTRATOR FOR THE ADMINISTRATOR'S REASONABLE COSTS
22 INCURRED IN INVESTIGATING THE CONDUCT. IF A PERSON GIVING AN
23 ASSURANCE OF DISCONTINUANCE FAILS TO COMPLY WITH ITS TERMS, THE
24 ASSURANCE IS EVIDENCE THAT PRIOR TO THE ASSURANCE THE PERSON
25 ENGAGED IN THE CONDUCT DESCRIBED IN THE ASSURANCE.

26 **5-20-116. Injunctions.** THE ADMINISTRATOR MAY BRING A CIVIL
27 ACTION TO RESTRAIN A PERSON FROM VIOLATING THIS ARTICLE 20 OR

1 RULES PROMULGATED PURSUANT TO THIS ARTICLE 20 AND FOR OTHER
2 APPROPRIATE RELIEF, INCLUDING SUCH ORDERS OR JUDGMENTS AS MAY BE
3 NECESSARY TO COMPLETELY COMPENSATE OR RESTORE ANY PERSON
4 AFFECTED BY THE VIOLATION TO THE PERSON'S ORIGINAL POSITION. THE
5 ADMINISTRATOR MAY ALSO APPLY FOR A TEMPORARY RESTRAINING ORDER
6 OR A PRELIMINARY INJUNCTION AGAINST A RESPONDENT PENDING FINAL
7 DETERMINATION OF PROCEEDINGS. NO BOND OR OTHER SECURITY IS
8 REQUIRED OF THE ADMINISTRATOR BEFORE RELIEF UNDER THIS SECTION
9 MAY BE GRANTED.

10 **5-20-117. Civil actions by the administrator.** THE
11 ADMINISTRATOR MAY BRING A CIVIL ACTION AGAINST A STUDENT LOAN
12 SERVICER FOR ANY VIOLATION OF THIS ARTICLE 20. AN ACTION MAY
13 RELATE TO TRANSACTIONS WITH MORE THAN ONE PERSON. THE COURT
14 MAY ORDER A STUDENT LOAN SERVICER TO REFUND TO A PERSON ANY
15 CHARGES COLLECTED IN VIOLATION OF THIS ARTICLE 20 AND MAY ALSO
16 ASSESS CIVIL PENALTIES AGAINST THE STUDENT LOAN SERVICER AS SET
17 FORTH IN SECTION 5-20-112 (2). IF THE ADMINISTRATOR PREVAILS IN AN
18 ACTION BROUGHT UNDER THIS SECTION, THE ADMINISTRATOR MAY
19 RECOVER REASONABLE COSTS IN INVESTIGATING AND BRINGING THE
20 ACTION AND MAY RECOVER REASONABLE ATTORNEY FEES.

21 **5-20-118. Limitations.** NOTWITHSTANDING ARTICLE 80 OF TITLE
22 13, ALL ACTIONS BROUGHT UNDER THIS ARTICLE 20 MUST BE COMMENCED
23 WITHIN FOUR YEARS AFTER THE DATE ON WHICH ANY VIOLATION OF THIS
24 ARTICLE 20 OCCURRED OR THE DATE ON WHICH THE LAST IN A SERIES OF
25 SUCH ACTS OR PRACTICES OCCURRED OR WITHIN FOUR YEARS AFTER THE
26 PLAINTIFF DISCOVERED OR IN THE EXERCISE OF REASONABLE DILIGENCE
27 SHOULD HAVE DISCOVERED THE OCCURRENCE OF A VIOLATION OF THIS

1 ARTICLE 20; EXCEPT THAT THE PERIOD OF LIMITATION PROVIDED IN THIS
2 SECTION MAY BE EXTENDED FOR A PERIOD OF ONE YEAR IF THE PLAINTIFF
3 PROVES THAT FAILURE TO TIMELY COMMENCE THE ACTION WAS CAUSED
4 BY THE DEFENDANT ENGAGING IN CONDUCT CALCULATED TO INDUCE THE
5 PLAINTIFF TO REFRAIN FROM OR POSTPONE THE COMMENCEMENT OF THE
6 ACTION.

7 **5-20-119. Confidential information.** (1) THE ADMINISTRATOR
8 SHALL NOT MAKE PUBLIC THE NAME OR IDENTITY OF A PERSON WHOSE
9 ACTS OR CONDUCT THE ADMINISTRATOR INVESTIGATES OR EXAMINES
10 PURSUANT TO THIS ARTICLE 20 OR THE FACTS DISCLOSED IN THE
11 INVESTIGATION OR EXAMINATION.

12 (2) THE ADMINISTRATOR MAY DISCLOSE LICENSE APPLICATION
13 AND RENEWAL RECORDS PROVIDED TO THE ADMINISTRATOR AND OTHER
14 CONTENTS OF LICENSE RECORDS MAINTAINED PURSUANT TO THIS ARTICLE
15 20, BUT THE ADMINISTRATOR SHALL NOT MAKE PUBLIC THE CONFIDENTIAL
16 INFORMATION CONTAINED IN THE RECORDS.

17 (3) THE RESTRICTIONS ON THE DISCLOSURE OF INFORMATION IN
18 SUBSECTIONS (1) AND (2) OF THIS SECTION DO NOT APPLY TO DISCLOSURES
19 BY THE ADMINISTRATOR IN ACTIONS OR ADMINISTRATIVE ENFORCEMENT
20 PROCEEDINGS PURSUANT TO THIS ARTICLE 20.

21 **SECTION 3.** In Colorado Revised Statutes, 6-1-105, **add** (1)(III)
22 as follows:

23 **6-1-105. Deceptive trade practices.** (1) A person engages in a
24 deceptive trade practice when, in the course of the person's business,
25 vocation, or occupation, the person:

26 (III) VIOLATES ARTICLE 20 OF TITLE 5.

27 **SECTION 4.** In Colorado Revised Statutes, 13-4-102, **add**

1 (2)(mm) as follows:

2 **13-4-102. Jurisdiction.** (2) The court of appeals has initial
3 jurisdiction to:

4 (mm) REVIEW FINAL DECISIONS OR ORDERS OF THE
5 ADMINISTRATOR AS PROVIDED IN ARTICLE 20 OF TITLE 5.

6 **SECTION 5. Appropriation.** For the 2019-20 state fiscal year,
7 \$115,273 is appropriated to the department of law. This appropriation is
8 from the general fund and is based on an assumption that the department
9 will require an additional 1.4 FTE. To implement this act, the department
10 may use this appropriation for the consumer credit unit.

11 **SECTION 6. Act subject to petition - effective date -**
12 **applicability.** (1) This act takes effect January 1, 2020; except that, if a
13 referendum petition is filed pursuant to section 1 (3) of article V of the
14 state constitution against this act or an item, section, or part of this act
15 within the ninety-day period after final adjournment of the general
16 assembly, then the act, item, section, or part will not take effect unless
17 approved by the people at the general election to be held in November
18 2020 and, in such case, will take effect on the date of the official
19 declaration of the vote thereon by the governor.

20 (2) This act applies to conduct occurring on or after the applicable
21 effective date of this act.