
OLR Bill Analysis

sSB 890 (File 112, as amended by Senate "A" and "B")*

AN ACT CONCERNING STUDENT LOAN SERVICERS.

SUMMARY

This bill requires federal student loan servicers to annually register with the Department of Banking (DOB), rather than obtain licensure as current law requires (§§ 1, 3 & 4) (see BACKGROUND). It sets a \$900 fee for both registrations and renewals. The bill retains the law's licensure requirement for private student loan servicers which, under the bill, are student loan servicers responsible for servicing student education loans that are not federal loans (i.e., "private student education loans").

Generally, the bill subjects registrants to requirements similar to those for licensees under existing law, but it excludes registrants from certain enforcement provisions in existing law.

Under the bill, a "federal student loan servicer" is one that services federal student education loans to student borrowers under a contract with the U.S. Department of Education (ED). A "federal student education loan" is a loan ED owns that was either (1) made through the William D. Ford Federal Direct Loan Program or (2) purchased by the department as authorized by federal law. Servicing loans includes receiving scheduled periodic payments, applying payments to principal and interest, and performing other associated administrative tasks.

The bill also allows student loan borrowers, classes of student loan borrowers, or legal representatives of either to bring a lawsuit against a student loan servicer for violations of Connecticut's requirements for student loan servicers (§ 17).

Lastly, the bill makes (1) numerous technical and conforming

changes, particularly for the transition from a license to a registration (§§ 1, 2 & 4-16), and (2) a minor change specifying that “change of control” of a student loan servicer, whether federal or private, is a change that causes majority ownership, voting rights, or control to be held by a different control person or group of control persons (§ 5).

*Senate Amendment “A” allows, rather than requires, a court to award treble damages in a private action against a servicer that is found to have engaged in certain conduct.

*Senate Amendment “B” exempts banks and credit unions and certain subsidiaries from being subject to the private right of action.

EFFECTIVE DATE: July 1, 2021, except the private right of action provision takes effect October 1, 2021.

§§ 3-5, 8-10 & 16 — FEDERAL STUDENT LOAN SERVICERS

Registration (§§ 3-5)

Scope and Fee. The bill requires anyone that acts, directly or indirectly, as a federal student loan servicer to register with DOB on the Nationwide Mortgage Licensing System and Registry (NMLS, see BACKGROUND) and in the form the banking commissioner prescribes. As under existing law for private student loan servicers, the bill exempts from registration banks and credit unions, their wholly owned subsidiaries, and operating subsidiaries where the owners are wholly owned by the bank or credit union.

The bill sets the registration and renewal fee at \$900 and requires registrants to pay to NMLS any other required fees or charges. As under existing law for licenses, a registration is not transferable or assignable.

Duration. Under the bill, a registration takes effect once it is filed on the system, and it remains effective until it is expired, surrendered, revoked, or suspended. Registrations generally expire at the close of business on December 31 of the year of their filing, except that registrations filed on or after November 1 expire at the close of business on December 31 the following year. A registration renewal

request must be filed on the system between November 1 and December 31 of the year the registration expires.

The bill requires each registrant to notify the DOB commissioner in writing if a contract it has with ED expires or is revoked or terminated. This must occur within seven days after the event. The bill deems a registration based solely upon an expired, revoked, or terminated ED contract also expired as of the date of that event.

Service of Process. The bill requires each registrant to appoint an agent to accept service of process in Connecticut on its behalf and deems service made upon the agent service upon the registrant.

If an agent cannot be located with reasonable diligence or the registrant failed to appoint one, the bill allows service to be made upon a control person (e.g., a partner, senior executive, or shareholder with 10% of each class of the corporation's securities) of the registrant.

Designated Liaison. The bill requires each registrant to designate someone to communicate on its behalf with the DOB commissioner. The registrant must (1) provide the liaison's contact information when registering and (2) notify the commissioner of a change in liaison or information within 10 days after it occurs.

Commissioner Authority (§§ 3, 5, 8-10 & 16)

Investigations and Examination. As is the case for all DOB licensees, the bill allows the DOB commissioner, for registration status purposes, to access records, information, or evidence such as (1) criminal, civil, and administrative history information; (2) personal history and experience information, such as credit reports; and (3) other records or information relevant to the investigation.

The bill allows the DOB commissioner to suspend, revoke, or refuse to renew a registration if a fact or condition exists that would have precluded registration if it existed at the time of registration filing.

The bill also authorizes the commissioner to conduct investigations and examinations of registrants, as he currently may for licensees, to

(1) determine compliance with the student loan servicer law or (2) investigate violations or complaints. This includes the ability to access certain records, examine a servicer or associated person, or legally require testimony or document production.

As with licensees, the bill requires registrants to pay the commissioner the actual cost of an examination he conducts. But unlike existing law for licensees, if a registrant fails to pay the cost within 60 days of demand, the registrant's credential is not suspended.

Action Against Violators. The bill allows the DOB commissioner, as he may under existing law for licensees, to take action against a registrant if it appears that:

1. someone violated, is violating, or is about to violate the student loan servicers law;
2. someone knew or should have known that the person's act or omission contributed to a violation of the student loan servicers law; or
3. the registrant or certain associated persons (including employees) committed fraud, engaged in dishonest activities, or made a misrepresentation.

Civil Penalties. The bill authorizes the DOB commissioner to assess a civil penalty of up to \$100,000 per violation on anyone that acts as a federal student loan servicer for 30 days or more without being registered (§ 3 and CGS § 36a-50(a)(2)). It allows for the same penalty on registrants that do the following things:

1. act under a name or place of business that is not named in the registration;
2. use a name other than the legal name, unless disapproved by the commissioner, or a commissioner-approved fictitious name;
3. maintain more than one place of business under the same registration; or

4. fail to timely provide advance notice in NMLS or obtain the commissioner's approval before changing a control person, other than for a change of certain people that is not due to an acquisition or a change of control.

Under the bill, the penalty may not be assessed until after notice and an opportunity for a hearing (CGS § 36a-50(a)). Unlike existing law for licensees, the bill does not authorize the commissioner to automatically suspend a registration for these violations.

Registrant Responsibilities (§§ 5, 6 & 15)

The bill requires registrants to abide by many of the same requirements that originally applied to them as licensees, including the following:

1. properly changing registrant information in the NMLS (e.g., name, office address);
2. filing information on NMLS, or notifying the commissioner in writing if filing is not possible, about certain developments with the registrant or a control person, branch manager, or qualified individual (e.g., bankruptcy filing or restructuring, certain criminal indictments, or action by a governmental agency or a state's attorney general); and
3. providing their NMLS unique identifier in solicitations and advertisements and maintaining solicitations and advertisements for two years.

Additionally, current law requires licensees to (1) maintain records of each student loan transaction for at least two years after the final loan payment or the loan's assignment, whichever occurs first, and (2) if the DOB commissioner requests, make the records available or send them to the commissioner. The bill applies these requirements to registrants and specifies that, for both licensees and registrants, these requirements do not apply if federal law, a federal student loan agreement, or an ED contract requires otherwise.

In addition to licensure fees, existing law allows the commissioner to collect assessments from certain licensed entities, including student loan servicers, to help meet the department's expenses. The bill does not apply this assessment to registrants.

Prohibited Acts (§ 7)

The bill generally applies to federal student loan servicer registrants the same list of prohibited actions as apply to private student loan servicer licensees. These actions include such things as defrauding or misleading borrowers, using unfair or deceptive practices, fraudulently obtaining property, or knowingly or recklessly applying loan payments or providing inaccurate information to a credit bureau that ends up harming a borrower's credit.

Two of the law's prohibited acts are failing to (1) establish, enforce, and maintain policies and procedures to supervise employees, agents, and operations and achieve compliance with student loan servicing requirements and (2) comply with DOB student loan servicing standards. The bill exempts servicers from needing to do these things if they are required do otherwise under a federal law, federal student loan agreement, or contract with ED.

§ 17 — LAWSUITS

Bringing an Action

The bill allows student loan borrowers, classes of similarly situated student loan borrowers, or legal representatives of either to bring a lawsuit in Superior Court for violations of state student loan servicer requirements. They may bring the action before exhausting any administrative remedies.

The bill exempts the following from being subject to an action: banks and credit unions, their wholly owned subsidiaries, and operating subsidiaries where the owners are wholly owned by the bank or credit union. (These entities are exempt from licensing and registration as student loan servicers (see above).)

Relief

Under the bill, if a court finds that a student loan servicer committed the alleged violations, it may award actual damages, reasonable attorney's fees, court costs, punitive damages, property restitution, and appropriate equitable relief.

The bill also allows a court to award treble damages to a prevailing borrower if it finds that the servicer engaged in conduct that substantially interferes with (1) the borrower's right to an alternative payment arrangement, loan forgiveness, cancellation, or discharge of the loan or (2) another financial benefit set out in the borrower's promissory note or applicable federal law and regulations.

These remedies are in addition to any other remedies state or federal law provide.

BACKGROUND

Related Bill

sSB 848 (File 127), reported favorably by the Banking Committee, contains a similar provision about what constitutes "change of control" (§ 19).

NMLS

NMLS is a license and registration system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the mortgage and other finance services industry. It (1) may be also referred to as NMLSR or any other name or acronym as may be assigned and (2) is owned and operated by the State Regulatory Registry, LLC, or a successor or affiliated entity (CGS § 36a-2).

Related Case: Pennsylvania Higher Education Assistance Agency (PHEAA) v. Perez

The legislature established a licensing requirement for student loan servicers in 2015 (PA 15-162). PHEAA, a servicer of federal student loans made by ED, obtained a student loan servicer license under Connecticut law. PHEAA later challenged DOB examination efforts to obtain certain loan documents that were owned by ED and in its

possession. In 2020, the Connecticut federal district court ruled that enforcement of DOB's licensing authority over federal student loan servicers is preempted and enjoined DOB from requiring PHEAA to follow its licensing authority (457 F.Supp.3d 112 (D. Conn. 2020)).

COMMITTEE ACTION

Banking Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/09/2021)

Judiciary Committee

Joint Favorable

Yea 26 Nay 12 (05/03/2021)