

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA STUDENT LOAN SERVICERS ACT;
5 REQUIRING STUDENT LOAN SERVICERS TO BE LICENSED BY THE DEPARTMENT OF JUSTICE;
6 CREATING THE STUDENT LOAN OMBUDSMAN; CREATING THE STUDENT LOAN SERVICING LICENSE
7 ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; PROVIDING DEFINITIONS; AND AMENDING
8 SECTION 17-7-502, MCA."
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10 WHEREAS, student loan debt has reached a crisis point, with more than 44,700,000 individuals in the
11 United States owing in excess of \$1,680,000,000,000; and

12 WHEREAS, total student loan debt in the United States has surpassed both credit card debt and auto
13 loan debt, while tuition and costs continue to rise; and

14 WHEREAS, according to The Institute for College Access and Success, in Montana in 2019, 57% of
15 college graduates had student loan debt averaging \$27,265; and

16 WHEREAS, according to EducationData.org, there are more than 120,000 Montana citizens with an
17 average student loan debt of \$33,000, totaling more than \$4,000,000,000; and

18 WHEREAS, student loan debt is a hindrance to Montana's economy, preventing borrowers from
19 achieving financial independence, purchasing homes and property, starting businesses, and otherwise
20 investing in Montana's economy; and

21 WHEREAS, the student loan servicers who administer student loans serve as a critical link between
22 borrowers and lenders by managing accounts, processing payments, and communicating directly with
23 borrowers, all without any consistent, market-wide federal standards for student loan servicing; and

24 WHEREAS, the federal Consumer Financial Protection Bureau issued a report in September 2015 that
25 found student loan borrowers encounter services that discourage borrower-friendly alternative payment plans,
26 fail to respond to questions and payment processing errors, and fail to provide sufficient information to
27 borrowers regarding payments, benefits, interest rates, and other charges; and

28 WHEREAS, to protect the interests of Montana's citizens, the Legislature finds it necessary to promote

1 and ensure student loan borrowers have meaningful access to federal affordable repayment and loan
2 forgiveness benefits, receive quality customer service and fair treatment, and obtain reliable information about
3 student loans and loan repayment options.

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5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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7 NEW SECTION. **Section 1. Short title.** [Sections 1 through 19] may be cited as the "Montana
8 Student Loan Servicers Act".

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10 NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 19] is to protect the rights
11 and interests of student loan borrowers in Montana. The provisions of [sections 1 through 19] apply to any
12 person engaged in servicing a student loan owed by an individual who is a resident of Montana. For purposes
13 of [sections 1 through 19], the residence of an individual is the address given by the individual as the
14 individual's residence to the creditor or student loan servicer. Until an individual notifies the creditor or student
15 loan servicer of a new or different address, the given address is presumed to be unchanged.

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17 NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 19], unless the context
18 clearly indicates otherwise, the following definitions apply:

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(1) "Consumer reporting agency" has the meaning provided in 30-14-1726.

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(2) "Department" means the department of justice created in 2-15-2001.

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(3) "Education expenses" means expenses that are included as part of the cost of attendance at a
22 postsecondary institution for a student.

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(4) "Record" has the same meaning as provided in 30-1-201.

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(5) "Servicing" means:

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(a) (i) receiving a scheduled periodic payment or notification of a periodic payment from a borrower;

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and

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(ii) applying payments to the borrower's account pursuant to the terms of a student loan or of the

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contract governing the servicing;

1 (b) during a period when no payment is required on a student loan:

2 (i) maintaining account records for the student loan; and

3 (ii) communicating with the borrower regarding the student loan on behalf of the loan holder; or

4 (c) interactions with a borrower, including activities to help prevent default on obligation arising from
5 student loans and conducted to facilitate the activities provided for in subsections (5)(a) and (5)(b).

6 (6) (a) "Student loan" means a loan that is made, insured, or guaranteed under Subchapter IV of the
7 federal Higher Education Act of 1965, 20 U.S.C. 1070 et seq., or that is extended to a student loan borrower for
8 the purpose of funding, in whole or in part, education expenses. The term includes a loan that is extended to
9 refinance or consolidate a borrower's existing student loans.

10 (b) The term does not include a loan:

11 (i) under an open-end credit plan in which a creditor reasonably contemplates repeated transactions,
12 with the terms of the transactions provided for and which provides for a finance charge that may be computed
13 from time to time on the outstanding unpaid balance; or

14 (ii) a loan that is secured by real property, regardless of the purpose of the loan.

15 (7) "Student loan borrower" or "borrower" means an individual who:

16 (a) has received or agreed to pay a student loan; or

17 (b) shares responsibility with the individual in subsection (7)(a) for repaying the student loan.

18 (8) (a) "Student loan servicer" means a person that:

19 (i) (A) receives a scheduled periodic payment from a borrower or notification of the payments; and

20 (B) applies payments to the borrower's account pursuant to the terms of the student loan or of the
21 contract governing the servicing;

22 (ii) during a period when no payment is required on a student loan:

23 (A) maintains account records for the loan; and

24 (B) communicates with the borrower regarding the loan on behalf of the loan holder; or

25 (iii) interacts with a borrower, including activities to help prevent default on obligations arising from
26 education loans and conducted to facilitate the activities provided for in subsections (8)(a)(i) and (8)(a)(ii).

27 (b) The term does not include:

28 (i) a federally chartered savings and loan association, federal savings bank, or federal credit union

1 that is authorized to transact business in Montana;

2 (ii) a savings and loan association, savings bank, or credit union organized under the laws of this or
3 any other state that is authorized to transact business in Montana; or

4 (iii) the state or a political subdivision of the state, but only to the extent that servicing is performed
5 pursuant to Title 20, chapter 26, part 11. This subsection (8)(b)(iii) does not exempt a nongovernmental entity
6 that performs student loan servicing pursuant to a contract with an agency, instrumentality, or political
7 subdivision of the state.

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9 NEW SECTION. Section 4. License required. A person may not act as a student loan servicer,
10 directly or indirectly, without first obtaining a student loan servicing license from the department pursuant to
11 [sections 1 through 19].

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13 NEW SECTION. Section 5. Licensure of student loan servicers. (1) (a) A person seeking to act as
14 a student loan servicer in Montana is exempt from the application procedures described in this section if the
15 department determines that the applicant is a party to a contract awarded by the United States secretary of
16 education pursuant to 20 U.S.C. 1087f. The department shall adopt a procedure to document an applicant's
17 eligibility for the exemption.

18 (b) With regard to an applicant who is exempt under subsection (1)(a), the department shall:

19 (i) automatically issue a license or a renewal license upon payment of the fees required under
20 [section 6]; and

21 (ii) consider the applicant to have met the requirements of subsection (2).

22 (c) A person issued a license pursuant to subsection (1)(a):

23 (i) is exempt from the provisions of subsections (3) through (9); and

24 (ii) shall comply with the record requirements in subsection (10) except to the extent that the
25 requirements are inconsistent with federal law.

26 (d) (i) A person issued a license pursuant to subsection (1)(a) shall provide the department with
27 written notice within 7 days after notification of the expiration, revocation, or termination of any contract
28 awarded by the United States secretary of education under 20 U.S.C. 1087f.

1 (ii) The person has 30 days after notification to satisfy the requirements of subsection (2) to continue
2 to act as a student loan servicer in Montana. At the expiration of the 30 days, if the person has not satisfied the
3 requirements of subsection (2), the department shall suspend any license granted to the person under this
4 section.

5 (2) (a) A person seeking to act as a student loan servicer in Montana who is not exempt pursuant to
6 subsection (1) shall apply for an initial license from the department on a form prescribed by the department.

7 The application must include:

8 (i) a financial statement prepared by a certified public accountant or public accountant, a general
9 partner if the applicant is a partnership, a corporate officer if the applicant is a corporation, or a member
10 authorized to execute financial statements if the applicant is a limited liability company or association; and

11 (ii) information regarding the history of criminal convictions from:

12 (A) the applicant, if the applicant is an individual;

13 (B) the partners of the applicant, if the applicant is a partnership;

14 (C) the members of the applicant, if the applicant is a limited liability company or association; or

15 (D) the officers, directors, and principal employees of the applicant, if the applicant is a corporation.

16 (b) The information submitted pursuant to this subsection (2) is sufficient, as determined by the
17 department, to make the findings required under this section.

18 (3) (a) Upon the filing of an application for an initial license and the payment of fees for licensing and
19 investigation pursuant to [section 6], the department shall investigate the financial condition and responsibility,
20 financial and business experience, character, and general fitness of the applicant.

21 (b) The department may issue a license pursuant to this section if the department finds:

22 (i) the applicant's financial condition is sound;

23 (ii) the applicant's business will be conducted honestly, fairly, equitably, carefully, and efficiently within
24 the purposes and intent of [sections 1 through 19] and in a manner commanding the confidence and trust of the
25 community;

26 (iii) the applicant is properly qualified and of good character in all respects. The requirements of this
27 subsection (3)(a)(iii) apply to:

28 (A) the applicant, if the applicant is an individual;

- 1 (B) each partner of the applicant, if the applicant is a partnership;
- 2 (C) each member of the applicant, if the applicant is a limited liability company or association; or
- 3 (D) the president, the chair of the executive committee, each senior officer responsible for the
- 4 corporation's business, the chief financial officer or other person who performs similar functions, each director,
- 5 each trustee, and each shareholder holding 10% or more of each class of the securities of the corporation if the
- 6 applicant is a corporation.

7 (iv) no person acting on behalf of the applicant has knowingly made an incorrect statement of a

8 material fact in the application or in any report or statement made pursuant to [sections 1 through 19]; and

9 (v) the applicant has met any other requirements as determined by the department.

10 (4) (a) A license issued pursuant to this section expires each January 31 unless renewed or

11 surrendered, suspended, or revoked pursuant to [sections 1 through 19]. No later than 15 days after a licensee

12 ceases to engage in the business of servicing in Montana for any reason, the licensee shall provide written

13 notice of surrender to the department and surrender its license for each location in which the licensee has

14 ceased to engage in servicing.

15 (b) The written notice of surrender must identify the location where the records of the licensee will be

16 stored and the name, address, and telephone number of a person authorized to provide access to the records.

17 (c) Surrender of a license does not reduce or eliminate the licensee's civil or criminal liability arising

18 from acts or omissions occurring before the surrender of the license, including any administrative actions

19 undertaken by the department to revoke or suspend a license, assess a civil penalty, order restitution, or

20 exercise any other authority provided to the administrator.

21 (5) (a) A license issued pursuant to this section may be renewed for the ensuing 12-month period

22 upon filing of an application containing all of the required records and fees, including renewal fees, established

23 by the department under [section 6]. A renewal application must be filed on or before January 31 of the year in

24 which the license expires. The department may establish a late fee for any renewal applications submitted after

25 January 31.

26 (b) If an application for renewal license has been filed with the department on or before the license

27 expiration date, the existing license continues in effect until the department issues a renewal license or notifies

28 the licensee in writing that the department is denying a renewal license and the grounds on which the refusal is

1 based.

2 (c) The department may refuse to issue a renewal license on any ground on which the department
3 may refuse to issue an initial license.

4 (6) If a check paid to the department for a license, investigation, or renewal fee under this section is
5 dishonored, the department shall suspend the license or renewal license that has been issued. The department
6 shall notify the licensee of the suspension pending proceedings for revocation or refusal to renew and an
7 opportunity for a hearing pursuant to [section 13].

8 (7) An applicant or licensee shall notify the department in writing of any change in the information
9 provided in the initial application or most recent application for renewal, as applicable, within 10 business days
10 after the occurrence of the event that results in the change.

11 (8) The department may consider an application for a license abandoned if the applicant fails to
12 respond to a request for information required under [sections 1 through 19] or any rules adopted pursuant to
13 [sections 1 through 19] as long as the department notifies the applicant in writing that the application will be
14 considered abandoned if the applicant fails to submit the information within 60 days after the date the
15 department made the request. Abandonment of an application under this subsection does not preclude an
16 applicant from submitting a new application for license under [sections 1 through 19].

17 (9) A licensee may not act within Montana as a student loan servicer under any name or at any place
18 of business other than those named in the license. A licensee shall give prior written notice to the department of
19 a change of business location. A licensee may not operate more than one place of business under the same
20 license, but the department may issue more than one license to a licensee that complies with [sections 1
21 through 19] for each license. A license is not transferrable or assignable.

22 (10) A student loan servicer shall maintain adequate records of each student loan transaction for not
23 less than 2 years after the final payment on the student loan or the assignment of the student loan, whichever
24 occurs first, or except as otherwise required by federal law, a federal student loan agreement, or a contract
25 between the federal government and a licensee. Upon request by the department, a student loan servicer shall
26 make the records available or send the records to the department within 5 business days of the department's
27 request. The department may give the licensee additional time to provide the records at the licensee's request.

28 (11) (a) The department may suspend, revoke, annul, limit, modify, or refuse to renew a license

1 issued pursuant to subsection (2) or take any other action in accordance with [sections 1 through 19] if the
2 department finds one or more of the following:

3 (i) the licensee has violated any provision of [sections 1 through 19], or any rule lawfully adopted or
4 order lawfully issued pursuant to [sections 1 through 19]; or

5 (ii) any fact or condition exists that, if it had existed at the time of the original application for the license,
6 would clearly have warranted a denial of the license.

7 (b) The department may not reduce or return a license fee if the license is surrendered, revoked, or
8 suspended.

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10 **NEW SECTION. Section 6. License and investigation fees.** (1) A person applying for license under
11 [section 5] shall pay the following nonrefundable fees established by the department:

12 (a) an initial license fee of at least \$1,000;

13 (b) an annual renewal fee of at least \$1,000; and

14 (c) an investigation fee.

15 (2) The department shall determine the amount of fees required under this section and may
16 periodically increase or decrease the amount of one or more of the fees as necessary.

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18 **NEW SECTION. Section 7. Student loan servicers--duties--definitions.** (1) Except as otherwise
19 provided in federal law, federal student loan agreements, or a contract between the federal government and a
20 student loan servicer, a student loan servicer shall perform the duties required under this section.

21 (2) (a) A student loan servicer shall respond to a written inquiry from a student loan borrower, the
22 representative of a student loan borrower, or the student loan ombudsman within 10 business days after receipt
23 of the request and, within 30 days after receipt of the request, provide information relating to the request and, if
24 applicable, any action the student loan servicer will take to correct the account or an explanation for the student
25 loan servicer's position that the borrower's account is correct.

26 (b) The 30-day period provided for in subsection (2)(a) may be extended for up to 15 days if, before
27 the end of the original 30-day period, the student loan servicer notifies the person making the original request of
28 the extension and the reasons for the delay in responding.

1 (c) Upon receipt of a written request related to a dispute over a borrower's payment on a student loan,
2 the student loan servicer may not furnish adverse information to a consumer reporting agency regarding a
3 payment that is the subject of the written inquiry for 60 days following receipt of the written request.

4 (3) Except as provided in federal law or required by a student loan agreement, a student loan servicer
5 shall inquire of a borrower how to apply an overpayment to a student loan. The borrower's direction for
6 application of an overpayment must stay in effect for any future overpayments during the term of a student loan
7 until the borrower provides a different direction.

8 (4) A student loan servicer shall apply partial payments in a manner that minimizes late fees and
9 negative credit reporting. If the loans on a borrower's student loan account have an equal level of delinquency,
10 the student loan servicer shall apply partial payments to satisfy as many of the individual loan payments as
11 possible on the borrower's account.

12 (5) If a sale, assignment, or transfer of the servicing of a student loan results in a change in the
13 identity of the person to whom a borrower is required to send payments or direct communication regarding the
14 student loan, the following provisions apply:

15 (a) (i) as a condition of the sale, assignment, or other transfer of servicing of a student loan, the
16 student loan servicer shall require the new student loan servicer to honor all benefits originally represented as
17 available to a borrower during the repayment of the student loan and preserve the availability of the benefits,
18 including any benefits for which the borrower has not yet qualified.

19 (ii) If a student loan servicer is not also the loan holder or is not acting on behalf of the loan holder, the
20 student loan servicer satisfies the requirements of subsection (5)(a)(i) by providing the new student loan
21 servicer with information necessary for the new student loan servicer to honor all benefits originally represented
22 as available to a borrower during the repayment of the student loan and preserve the availability of the benefits,
23 including any benefits for which the borrower has not yet qualified.

24 (b) (i) A student loan servicer shall transfer to the new student loan servicer all records regarding the
25 borrower and the applicable loans and accounts.

26 (ii) The records required under this subsection (5)(b) include the repayment status of the borrower and
27 any benefits associated with the student loan.

28 (iii) The student loan servicer shall complete the transfer of records under this subsection (5)(b) within

1 45 days after the sale, assignment, or other transfer of the servicing of a student loan.

2 (c) The parties shall notify affected borrowers of the sale, assignment, or other transfer of the
3 servicing of a student loan at least 7 days before the next payment on the loan is due. The notice must include:

4 (i) the identity of the new student loan servicer;

5 (ii) the effective date of the transfer of the borrower's student loan to the new student loan servicer;

6 (iii) the date on which the existing student loan servicer will no longer accept payments; and

7 (iv) the contact information for the new student loan servicer.

8 (6) A student loan servicer that services a student loan shall adopt policies and procedures to verify
9 that the student loan servicer has received all records regarding the borrower, the account of the borrower, and
10 the loans of the borrower, including the repayment status of the borrower and any benefits associated with the
11 student loan of the borrower.

12 (7) In addition to any duties imposed by federal law or regulations or the common law, a student loan
13 servicer shall:

14 (a) safeguard and account for any money handled for the borrower;

15 (b) follow reasonable and lawful instructions from the borrower;

16 (c) act with reasonable skill, care, and diligence;

17 (d) comply with the servicing standards set by the department by rule; and

18 (e) in the event of a delinquency or other act of default on the part of the borrower, act in good faith to
19 inform the borrower of the facts concerning the loan and the nature and extent of the delinquency or default
20 and, if the borrower responds, negotiate with the borrower, subject to the student loan servicer's duties and
21 obligations under the student loan servicing contract, if any, to attempt a resolution or workout pertaining to the
22 delinquency or default.

23 (8) For purposes of this section, the following definitions apply:

24 (a) "Overpayment" means a payment on a student loan in excess of the monthly amount due from a
25 borrower on a student loan.

26 (b) "Partial payment" means a payment on a student loan account that contains multiple individual
27 loans in an amount less than the amount necessary to satisfy the outstanding payment due on all loans in the
28 student loan account.

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NEW SECTION. Section 8. Student loan servicers -- prohibited acts. A student loan servicer may not:

- (1) directly or indirectly employ a scheme, device, or artifice to defraud or mislead borrowers;
- (2) engage in an unfair or deceptive practice toward any person or misrepresent or omit any material information in connection with the servicing of a student loan, including misrepresenting the amount, nature, or terms of any fee or payment due or claimed to be due on a student loan, the terms and conditions of the loan agreement, or the borrower's obligations under the loan;
- (3) obtain property by fraud or misrepresentation;
- (4) misapply student loan payments to the outstanding balance of a student loan;
- (5) provide inaccurate information to a consumer reporting agency;
- (6) fail to report both the favorable and unfavorable payment history of a borrower to a consumer reporting agency at least annually if the student loan servicer regularly reports information to a consumer reporting agency;
- (7) refuse to communicate with an authorized representative of a borrower who provides a written authorization signed by the borrower. A student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the borrower.
- (8) make any false statement or omit any material fact in connection with information or reports filed with a government agency or in connection with an investigation conducted by the department or another government agency; or
- (9) except as otherwise provided in federal law, federal student loan agreements, or a contract between the federal government and a student loan servicer, fail to properly evaluate a borrower for an income-based or other student loan repayment program or for eligibility for a loan forgiveness program before placing the borrower in forbearance of default, if an income-based repayment or other program is available to the borrower.

NEW SECTION. Section 9. Student loan ombudsman -- report -- rules -- student loan servicer licensing account. (1) The department shall designate, support, and maintain a student loan ombudsman to

1 provide timely assistance to borrowers. In consultation with the department, the ombudsman shall:

2 (a) receive, review, and attempt to resolve complaints from borrowers, including collaboration with
3 institutions of higher education, student loan servicers, and other participants in student loan lending, including
4 originators servicing their own student loans;

5 (b) compile and analyze data on student loan borrower complaint data received pursuant to
6 subsection (1)(a);

7 (c) assist borrowers in understanding their rights and responsibilities under the terms of student loans;

8 (d) provide information to the public, other agencies, legislators, and other interested parties
9 regarding the problems and concerns of borrowers and make recommendations for resolving those problems
10 and concerns;

11 (e) analyze and monitor the development and implementation of federal, state, and local laws, rules,
12 regulations, ordinances, and policies relating to borrowers and recommend any necessary changes;

13 (f) review the complete student loan history for a borrower who provides written consent for the
14 review;

15 (g) disseminate information concerning the availability of the student loan ombudsman to assist
16 borrowers and potential borrowers, including disseminating the information to institutions of higher education,
17 student loan servicers, and any other participants in student loan lending with any servicing concerns;

18 (h) work with the office of the commissioner of higher education to establish and maintain a student
19 loan borrower education course within existing resources that includes presentations and materials regarding
20 student loans. The course must include but is not limited to information about key loan terms, documentation
21 requirements, monthly payment obligations, income-based repayment options, loan forgiveness, and disclosure
22 requirements.

23 (i) take any other action necessary to fulfill the duties of the student loan ombudsman under this
24 section.

25 (2) The department shall submit a report by June 30 of each year to the education interim committee
26 in accordance with 5-11-210. The report must include:

27 (a) a description of the actions taken to implement this section;

28 (b) an assessment of the overall effectiveness of the student loan ombudsman; and

1 (c) recommendations regarding additional steps for the department to gain regulatory control over
2 licensing and enforcement with respect to student loan servicers.

3 (3) (a) There is created a student loan servicer licensing account in the state special revenue fund
4 established in 17-2-102. There must be deposited in the account:

5 (i) licensing and investigation fees collected pursuant to [section 6];

6 (ii) civil penalties collected pursuant to [sections 14 and 17];

7 (iii) any other money required by law to be deposited in the account; and

8 (iv) any other money appropriated or transferred to the account by the legislature.

9 (b) The state treasurer shall credit all interest and income derived from the deposit and investment of
10 money in the account to the account.

11 (c) Money in this account is statutorily appropriated, as provided in 17-7-502, to the department for
12 the purposes of [sections 1 through 19].

13
14 **NEW SECTION. Section 10. Powers and duties of department -- rulemaking authority.** (1) The
15 department may conduct investigations and examinations as follows:

16 (a) For the purposes of initial licensing, license renewal, suspension, revocation, or termination, or
17 general or specific inquiry or investigation to determine compliance with [sections 1 through 19], the department
18 may access, receive, and use:

19 (i) any records or information belonging to a licensee or person under examination, including criminal,
20 civil, and administrative history information;

21 (ii) personal history and experience information, including independent credit reports obtained from a
22 consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C.1681a; and

23 (iii) any other records or information the department considers relevant to the inquiry or investigation
24 regardless of the location, possession, control, or custody of the records or information.

25 (b) For the purposes of investigating violations or complaints arising under [sections 1 through 19] or
26 for the purposes of examination, the department may review, investigate, or examine any licensee or other
27 person subject to [sections 1 through 19] as often as necessary to carry out the purposes of [sections 1 through
28 19]. The department may direct, subpoena, or order the attendance of and examine under oath any person

1 whose testimony may be required about the student loan or the business or subject matter of an examination or
2 investigation, and may direct, subpoena, or order the person to produce records the department considers
3 relevant to the inquiry.

4 (c) (i) In making an examination or investigation authorized by this section, the department may
5 control access to any records of the licensee or person under examination or investigation. The department
6 may take possession of the records or place a person in exclusive charge of the records in the place where
7 they are usually kept.

8 (ii) During the period of department control pursuant to this subsection (1)(c), a person may not
9 remove or attempt to remove any of the records except pursuant to a court order or with the consent of the
10 department. Unless the department has reasonable grounds to believe that the records of the licensee or
11 person have been or are at risk of being altered or destroyed for purposes of concealing a violation of [sections
12 1 through 19], the licensee or owner of the records may have access to the records as necessary to conduct its
13 ordinary business affairs.

14 (2) To carry out the purposes of this section, the department may:

15 (a) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or
16 investigators to conduct or assist in the conduct of examinations or investigations;

17 (b) enter into agreements or relationships with other government officials or regulatory associations to
18 improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or
19 procedures, and records or information obtained under this section;

20 (c) use, hire, contract for, or employ publicly or privately available analytical systems, methods, or
21 software to examine or investigate the licensee or person subject to [sections 1 through 19];

22 (d) accept and rely on examination or investigation reports made by other government officials within
23 or outside of Montana;

24 (e) accept audit reports made by an independent certified public accountant of the licensee or person
25 subject to [sections 1 through 19] in the course of that part of the examination covering the same general
26 subject matter as the audit and may incorporate the audit report in a report of examination or investigation or
27 other writing of the department.

28 (3) A person subject to investigation or examination under this section may not knowingly withhold,

1 abstract, remove, mutilate, or destroy any records of other information relating to information regulated under
2 [sections 1 through 19].

3 (4) Whenever it appears to the department that a person has violated, is violating, or is about to
4 violate a provision of [sections 1 through 19] or a rule adopted pursuant to [sections 1 through 19] or that a
5 licensee or an owner, director, officer, member, partner, shareholder, trustee, employee, or agent of the
6 licensee has committed fraud, engaged in dishonest activities, or made a misrepresentation, the department
7 may take action against the licensee or person in accordance with [sections 1 through 19].

8 (5) The department shall adopt rules as necessary to implement [sections 1 through 19].
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10 NEW SECTION. Section 11. Compliance with federal law. A student loan servicer shall comply
11 with all applicable federal laws and regulations, including the federal Truth in Lending Act, 15 U.S.C. 1601, et
12 seq., or related regulations. In addition to any other remedies provided by law, a violation of the federal Truth in
13 Lending Act or related regulations is a violation of [sections 1 through 19] and is a basis upon which the
14 department may take enforcement action pursuant to [sections 1 through 19].
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16 NEW SECTION. Section 12. Violations. A violation of [sections 1 through 19] is an unfair or
17 deceptive act or practice within the meaning of 30-14-103.
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19 NEW SECTION. Section 13. Application of administrative procedure act. Except as otherwise
20 provided, Title 2, chapter 4, applies to and governs all rules promulgated and all administrative action taken by
21 the department pursuant to [sections 1 through 19].
22

23 NEW SECTION. Section 14. Administrative enforcement. (1) After notice and hearing, the
24 department may order a student loan servicer or a person acting on behalf of the student loan servicer to cease
25 and desist from engaging in violations of [sections 1 through 19], or rules promulgated or orders issued
26 pursuant to [sections 1 through 19]. The order issued by the department may also require the student loan
27 servicer or person to issue refunds of unlawful charges under [sections 1 through 19] and an administrative
28 penalty of up to \$1,500 per violation. The administrative penalty may be used in whole or in part for consumer

1 and creditor educational purposes.

2 (2) A respondent aggrieved by an order of the department may obtain judicial review of the order in a
3 state district court of competent jurisdiction.

4
5 NEW SECTION. Section 15. Assurance of discontinuance. If a claim is made that a person has
6 violated [sections 1 through 19], the department may accept an assurance in writing that the person will not
7 engage in the conduct in the future. The assurance may also require the person to make refunds of unlawful
8 charges under [sections 1 through 19], pay a penalty under [section 14(1)], and reimburse the department for
9 reasonable costs incurred in investigating the conduct. If a person giving assurance of discontinuance fails to
10 comply with its terms, the assurance is evidence that the prior to the assurance the person engaged in the
11 conduct described in the assurance.

12
13 NEW SECTION. Section 16. Injunction. (1) The department may bring a civil action to restrain a
14 person from violating [sections 1 through 19] or rules promulgated pursuant to [sections 1 through 19] and for
15 other appropriate relief, including an order or judgment as necessary to fully compensate or restore any person
16 affected by the violation to the person's original position.

17 (2) The department may apply for a temporary restraining order or a preliminary injunction against a
18 respondent pending final determination of the proceedings.

19 (3) The department is not required to provide a bond or other security before relief may be granted
20 under this section.

21
22 NEW SECTION. Section 17. Civil actions by the department. The department may bring a civil
23 action against a student loan servicer for a violation of [sections 1 through 19]. An action may be related to
24 transactions with more than one person. The court may order a student loan servicer to refund to a person any
25 charges collected in violation of [sections 1 through 19] and may assess civil penalties against the student loan
26 servicer pursuant to [section 14]. If the department prevails in an action brought under this section, the
27 department may recover reasonable costs and attorney fees incurred to investigate and bring the action.

28

1 **NEW SECTION. Section 18. Limitation.** (1) All actions brought under [sections 1 through 19] must
2 be commenced within 4 years after the later of:

- 3 (a) the date on which a violation of [sections 1 through 19] occurred;
- 4 (b) the date on which the last in a series of violations of [sections 1 through 19] occurred; or
- 5 (c) the borrower or the department discovered or should have discovered a violation of [sections 1
6 through 19].

7 (2) The period of limitation provided for in subsection (1) may be extended by 1 year if the borrower or
8 the department proves that failure to timely commence the action was caused by the defendant engaging in
9 conduct calculated to induce the borrower or the department to refrain from or postpone the commencement of
10 the action.

11
12 **NEW SECTION. Section 19. Confidential information.** (1) The department may not make public the
13 name or identity of a person whose acts or conduct is investigated or examined by the department pursuant to
14 [sections 1 through 19] or the facts disclosed in the investigation or examination.

15 (2) The department may disclose license application and renewal records provided to the department
16 and other contents of license records maintained pursuant to [sections 1 through 19]. The department may not
17 make public the confidential information contained in the records.

18 (3) The restrictions on the disclosure of information in subsections (1) and (2) do not apply to
19 disclosures by the department in actions or administrative enforcement proceedings pursuant to [sections 1
20 through 19].

21
22 **Section 20.** Section 17-7-502, MCA, is amended to read:

23 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
24 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without
25 the need for a biennial legislative appropriation or budget amendment.

26 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with
27 both of the following provisions:

- 28 (a) The law containing the statutory authority must be listed in subsection (3).

1 (b) The law or portion of the law making a statutory appropriation must specifically state that a
 2 statutory appropriation is made as provided in this section.

3 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-
 4 407; 5-13-403; 5-13-404; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310;
 5 10-3-312; 10-3-314; 10-3-802; 10-3-1304; 10-4-304; 15-1-121; 15-1-218; 15-31-1004; 15-31-1005; 15-35-108;
 6 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-
 7 106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410;
 8 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-
 9 107; 20-9-534; 20-9-622; 20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-
 10 105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; [section 9]; 37-43-204; 37-50-209; 37-54-
 11 113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-148; 53-9-
 12 113; 53-24-108; 53-24-206; 60-11-115; 61-3-321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-
 13 1108; 75-6-214; 75-11-313; 75-26-308; 76-13-151; 76-13-150; 76-17-103; 76-22-109; 77-1-108; 77-2-362; 80-
 14 2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-2-
 15 526; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.

16 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
 17 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
 18 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
 19 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined
 20 by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have
 21 statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the
 22 inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement
 23 system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410
 24 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental
 25 benefit provided by 19-6-709; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion
 26 of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of 50-1-115
 27 terminates June 30, 2021; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on
 28 occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117

1 terminates June 30, 2025; pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates
2 December 31, 2023; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30, 2023;
3 pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025; pursuant to
4 sec. 55, Ch. 151, L. 2017, the inclusion of 30-10-1004 terminates June 30, 2021; pursuant to sec. 1, Ch. 213, L.
5 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8, Ch. 284, L. 2017, the
6 inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec. 1, Ch. 340, L. 2017,
7 the inclusion of 22-1-327 terminates July 1, 2023; pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-
8 103 terminates June 30, 2027; pursuant to sec. 5, Ch. 50, L. 2019, the inclusion of 37-50-209 terminates
9 September 30, 2023; pursuant to sec. 1, Ch. 408, L. 2019, the inclusion of 17-7-215 terminates June 30, 2029;
10 pursuant to secs. 11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June 30, 2027;
11 pursuant to sec. 7, Ch. 465, L. 2019, the inclusion of 85-2-526 terminates July 1, 2023; and pursuant to sec. 5,
12 Ch. 477, L. 2019, the inclusion of 10-3-802 terminates June 30, 2023.)"

13

14 **NEW SECTION. Section 21. Codification instruction.** [Sections 1 through 19] are intended to be
15 codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections
16 1 through 19].

17

18 **NEW SECTION. Section 22. Severability.** If a part of [this act] is invalid, all valid parts that are
19 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
20 the part remains in effect in all valid applications that are severable from the invalid applications.

21

- END -