

2020 Regular Session

HOUSE BILL NO. 837

BY REPRESENTATIVE GREEN

CREDIT/CONSUMER LOANS: Provides relative to student loans

1 AN ACT

2 To enact Chapter 21 of Title 6 of the Revised Statutes of 1950, to be comprised of R.S.
3 6:1381 through 1384, relative to student loans; to define terms; to prohibit student
4 loan servicers from engaging in certain activities; to authorize student loan servicers
5 to engage in certain activities; to provide for written inquiries; to provide for
6 complaints; to authorize enforcement; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Chapter 21 of Title 6 of the Revised Statutes of 1950, comprised of R.S.
9 6:1381 through 1384, is hereby enacted to read as follows:

10 CHAPTER 21. STUDENT LOAN SERVICERS

11 §1381. Definitions

12 A. As used in this Chapter:

13 (1) "Nonconforming payment" means a payment made by a student loan
14 borrower that is more or less than the required payment for a student education loan
15 account.

16 (2) "Servicing" means all of the following:

17 (a) Receiving scheduled periodic payments from a student loan borrower
18 pursuant to the terms of a student education loan.

1 (b) Applying payments of principal and interest and other payments with
2 respect to the amounts received from a student loan borrower, as may be required
3 pursuant to the terms of a student education loan.

4 (c) Maintaining account records for a student education loan and
5 communicating with a student loan borrower regarding a loan on behalf of the loan's
6 holder during a period when no payment is required on the loan.

7 (d) Interacting with a student loan borrower to help prevent default on
8 obligations arising from a student education loan.

9 (3)(a) "Student education loan" means any of the following:

10 (i) A loan that is made, insured, or guaranteed under Title IV of the Higher
11 Education Act of 1965, as amended.

12 (ii) A loan that is extended to an individual with the express expectation that
13 the funds extended will be used in whole or in part to pay expenses that are included
14 as part of the cost of attendance of a student as defined in 20 U.S.C. 1087, regardless
15 of whether the loan is provided through the educational institution that the student
16 loan borrower attends or directly to the student loan borrower from the lender.

17 (iii) A loan that is extended in order to refinance or consolidate a consumer's
18 existing student education loan.

19 (b) The term does not include any of the following, regardless of the purpose
20 for the loan:

21 (i) A loan under an open-end credit plan as defined in 12 C.F.R. 1026.2.

22 (ii) A loan secured by real property.

23 (4) "Student loan borrower" means a resident of this state who meets either
24 of the following criteria:

25 (a) Has received or agreed to pay a student education loan.

26 (b) Shares repayment responsibility with a resident described in
27 Subparagraph (a) of this Paragraph.

1 §1832. Duties of student loan servicers

2 A. Except as required by a court order, a student loan borrower shall not do
3 any of the following:

4 (1) Employ, directly or indirectly, any scheme, device, or artifice to mislead
5 a student loan borrower.

6 (2) Engage in any unfair, abusive, or deceptive trade practice toward any
7 person.

8 (3) Misrepresent information or omit any material information in connection
9 with the servicing of a student education loan, including but not limited to the
10 following:

11 (a) Any fee owed by a student loan borrower.

12 (b) Any payment due by a student loan borrower.

13 (c) The appropriateness or availability of a student loan borrower's
14 repayment options.

15 (d) The terms and conditions of the student education loan.

16 (e) The student loan borrower's obligations under the student education loan.

17 (4) Obtain property by misrepresentation of fact or omission of material fact.

18 (5) Allocate a nonconforming payment in a manner other than as directed by
19 the student loan borrower, if, in writing or electronically, the student loan borrower
20 does any of the following:

21 (a) Makes a one-time direction for the allocation of future payments.

22 (b) Directs an allocation of a payment at the time the payment is made.

23 (c) Directs an allocation in response to an inquiry by the student loan
24 servicer.

25 (d) Changes an existing direction for the allocation of future payments.

26 (6) Knowingly or recklessly misapply, or refuse to correct a misapplication
27 of a payment from a student loan borrower.

1 (7) Knowingly or recklessly provide inaccurate information to a consumer
2 reporting agency or refuse to correct inaccurate information provided to a consumer
3 reporting agency.

4 (8) If a student loan servicer regularly reports information to a consumer
5 reporting agency, fail to report the favorable history of a student loan borrower to a
6 nationally recognized consumer reporting agency at least once a year.

7 (9) Refuse to communicate with an authorized representative of a student
8 loan borrower who provides a written authorization signed by the student loan
9 borrower, except as provided for in Subsection B of this Section.

10 (10) Negligently make a false statement or omit a material fact in
11 connections with any informational report filed with, or any investigation conducted
12 by, a state or local government agency.

13 B. A student loan servicer may adopt procedures to verify that an authorized
14 representative of a student loan borrower is authorized to act on behalf of the student
15 loan borrower.

16 §1383. Written inquiries and complaints

17 A. A student loan servicer shall acknowledge receipt of a written inquiry or
18 complaint from a student loan borrower or the authorized representative of a student
19 loan borrower within ten days after receiving the inquiry or complaint.

20 B. Unless a response to the written inquiry is included in the
21 acknowledgment required pursuant to Subsection A of this Section, a student loan
22 servicer shall provide information responding to a written inquiry or complaint
23 received pursuant to Subsection A of this Section of this within thirty days after
24 receiving the inquiry or complaint.

25 C. If a written inquiry or complaint received pursuant to Subsection A of this
26 Section relates to a student loan borrower's account balance, the information
27 provided pursuant to Subsection B of this Section is to include either of the
28 following:

1 (1) A statement that the student loan servicer has corrected the account
2 balance.

3 (2) An explanation of why the student loan servicer believes that the student
4 loan borrower's account is correct.

5 D. If a student loan borrower requests a document concerning the account
6 of the student loan borrower that is in the possession or control of a student loan
7 servicer, the student loan servicer shall provide the document within thirty days after
8 receiving the request.

9 E. If a student loan servicer receives a nonconforming payment, the student
10 loan servicer shall do all of the following:

11 (1) Notify the student loan borrower that the payment is a nonconforming
12 payment within ten days after receiving the payment.

13 (2) Ask the student loan borrower how the student loan borrower would like
14 the student loan servicer to apply the nonconforming payment to the student loan
15 borrower's account.

16 §1384. Enforcement

17 A. Notwithstanding the provisions of R.S. 51:1406, a violation of this
18 Chapter is a violation of R.S. 51:1401 et seq.

19 B. The commissioner of the office of financial institutions may do all of the
20 following:

21 (1) Enforce the provisions of this Chapter by exercising any of the powers
22 provided in R.S. 6:121 et seq.

23 (2) Seek an injunction to prohibit a person who has engaged in or is
24 engaging in a violation of this Chapter from engaging in or continuing to engage in
25 the violation.

26 (3) Enforce the provisions of this Chapter by requiring a violator to take
27 affirmative action to correct the violation, including the restitution of money or
28 property to a person aggrieved by the violation.

29 (4) Investigate violations of this Chapter.

1 (5) Aid any other unit of state government that has regulatory jurisdiction
2 over the business activities of the violator.

3 (6) Cooperate in the investigation and prosecution of any violation of this
4 Chapter with the office of the attorney general, the state's attorney, or any other unit
5 of law enforcement.

6 C. The court may enter any order or judgment necessary to accomplish the
7 following:

8 (1) Prevent a person from engaging in a prohibited practice.

9 (2) Restore to a person any money or real or personal property acquired from
10 the person by means of a prohibited practice.

11 (3) Appoint a receiver in case of a willful violation of this Chapter.

12 D. In any action brought by the commissioner of the office of financial
13 institutions pursuant to this Chapter, the commissioner is entitled to recover the costs
14 of the action for the use of this state.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 837 Original

2020 Regular Session

Green

Abstract: Requires student loan servicers to apply a borrower's payment in the manner requested by the borrower, to respond to inquiries and complaints by the borrower, and to follow certain other guidelines relative to student education loans.

Proposed law defines "nonconforming payment", "servicing", "student education loan", "student loan borrower", and "student loan servicer".

Proposed law prohibits a student loan servicer from the following:

- (1) Employing a scheme to mislead a student loan borrower.
- (2) Engaging in unfair, abusive, or deceptive trade practices.
- (3) Misrepresenting or omitting any material information in connection with the servicing of a student education loan.
- (4) Obtaining property by misinformation.
- (5) Allocating a nonconforming payment in a manner other than as directed by the borrower.

- (6) Knowingly or recklessly misapplying, or refusing to correct a misapplication of payment.
- (7) Knowingly or recklessly providing inaccurate information to a consumer reporting agency, or refuse to correct the inaccurate information.
- (8) Failing to report the favorable history f a student loan borrower to a nationally recognized consumer reporting agency at least once a year.
- (9) Refusing to communicate with an authorized representative of a student loan borrower.
- (10) Negligently making a false statement or omitting a material fact in connection with a report or investigation.

Proposed law allows a student loan servicer to adopt procedures to verify the authority of a representative to act on behalf of a student loan borrower.

Proposed law requires a student loan servicer to acknowledge receipt of an inquiry or complaint from a borrower.

Proposed law requires a student loan servicer to provide certain information when responding to an inquiry or complaint of a borrower.

Proposed law provides time limits applicable to various communications between the student loan servicer and the borrower.

A violation of proposed law is considered a violation of present law relative to unfair trade practices.

Proposed law allows the commissioner of the office of financial institutions to enforce the provisions of proposed law by doing any of the following:

- (1) Seeking an injunction.
- (2) Requiring a violator to take affirmative action to correct the violation.
- (3) Investigating violations of proposed law.
- (4) Aiding other agencies that have jurisdiction over a violator.
- (5) Cooperating in the investigation or prosecution of a violator.

Proposed law authorizes a court to enter any order or judgement necessary to prohibit violations of proposed law, restore money or property to a harmed person, or appoint a receiver in certain situations.

Proposed law provides that in any action brought by the commissioner under proposed law the commissioner is entitled to recover the costs of the action for the use of the state.

(Adds R.S. 6:1381-1384)