

2022 Regular Session

HOUSE BILL NO. 610

BY REPRESENTATIVE GREEN

CREDIT/CONSUMER LOANS: Provides relative to student loans

1 AN ACT

2 To enact Chapter 22 of Title 6 of the Louisiana Revised Statutes of 1950, to be comprised  
3 of R.S. 6:1401 through 1404, relative to student loans; to define terms; to prohibit  
4 student loan servicers from engaging in certain activities; to authorize student loan  
5 servicers to engage in certain activities; to provide for written inquiries; to provide  
6 for complaints; to authorize enforcement; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Chapter 22 of Title 6 of the Louisiana Revised Statutes of 1950, comprised  
9 of R.S. 6:1401 through 1404, is hereby enacted to read as follows:

10 CHAPTER 22. STUDENT LOAN SERVICERS

11 §1401. 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 CFR 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.

28           (5) "Student loan servicer" means a person or entity who administers a  
29           student loan from the time the proceeds are dispersed to the borrower until the loan

1 is paid off. Student loan servicing includes sending monthly payment statements,  
2 collecting monthly payments, maintaining records of payments and balances,  
3 collecting and paying taxes and insurance, remitting funds to the note holder, and  
4 following up on delinquencies.

5 §1402. Duties of student loan servicers

6 A. Except as required by a court order, a student loan servicer shall not do  
7 any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18          §1403. Written inquiries and complaints

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

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

27          C. If a written inquiry or complaint received pursuant to Subsection A of this  
28          Section relates to a student loan borrower's account balance, the information

1 provided pursuant to Subsection B of this Section is to include either of the  
2 following:

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

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

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

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

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

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

18 §1404. Enforcement

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

21 B. The commissioner of the Office of Financial Institutions may do all of  
22 the following:

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

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

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

4           (4) Investigate violations of this Chapter.

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

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

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

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

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

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

16           D. In any action brought by the commissioner of the Office of Financial  
17           Institutions pursuant to this Chapter, the commissioner is entitled to recover the costs  
18           of the action for the use of this state.

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#### 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)]

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HB 610 Original

2022 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. 6:1401-1404)