

**ASSEMBLY, No. 455**

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**STATE OF NEW JERSEY**

**218th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

**Assemblyman GARY S. SCHAER**

**District 36 (Bergen and Passaic)**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**Assemblyman JAMEL C. HOLLEY**

**District 20 (Union)**

**Assemblyman JOE DANIELSEN**

**District 17 (Middlesex and Somerset)**

**Co-Sponsored by:**

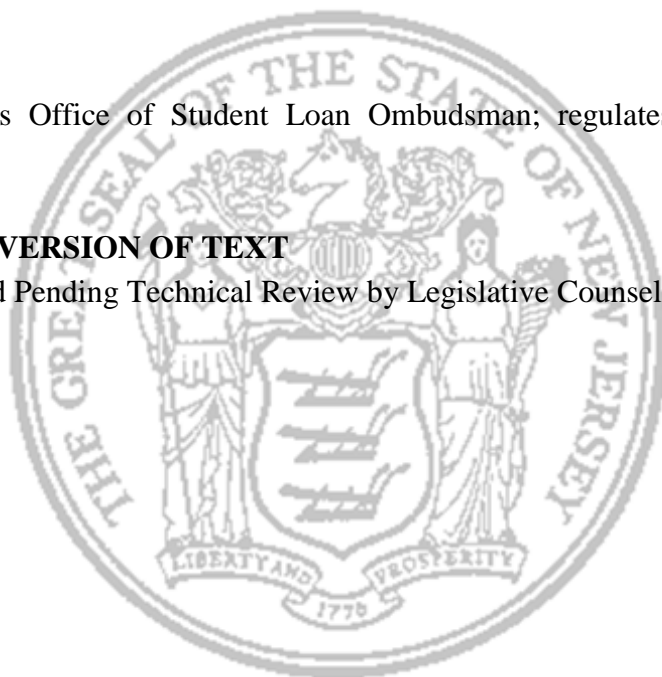
**Assemblywomen Mosquera, Pinkin, Assemblymen Eustace, Mazzeo, Chiaravalloti, Assemblywomen Lampitt, Muoio, Assemblymen Calabrese, Giblin, Assemblywomen Chaparro, Jasey and Murphy**

**SYNOPSIS**

Establishes Office of Student Loan Ombudsman; regulates student loan servicers.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 12/4/2018)**

1 AN ACT establishing the Office of the Student Loan Ombudsman  
2 and regulating student loan servicers and supplementing Title 17  
3 of the Revised Statutes.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. As used in this act:

9 "Commissioner" means the Commissioner of Banking and  
10 Insurance.

11 "Ombudsman" means the Student Loan Ombudsman appointed  
12 pursuant to section 2 of this act.

13 "Servicing" means: (1) receiving any scheduled periodic  
14 payments from a student loan borrower pursuant to the terms of a  
15 student education loan; (2) applying the payments of principal and  
16 interest and other payments with respect to the amounts received  
17 from a student loan borrower, as may be required pursuant to the  
18 terms of a student education loan; and (3) performing other  
19 administrative services with respect to a student education loan.

20 "Student education loan" means any loan primarily for personal  
21 use to finance education or other school-related expenses.

22 "Student loan borrower" means any resident of this State who  
23 has received or agreed to pay a student education loan; or any  
24 person who shares responsibility with a resident for repaying a  
25 student education loan.

26 "Student loan servicer" means any person, wherever located,  
27 responsible for the servicing of any student education loan to any  
28 student loan borrower.  
29

30 2. There is created within the Department of Banking and  
31 Insurance the Office of the Student Loan Ombudsman. The  
32 ombudsman shall be appointed by the Governor with the advice and  
33 consent of the Senate and shall serve at the pleasure of the  
34 Governor during the Governor's term of office. The ombudsman  
35 shall not hold any other office, position, or employment outside of  
36 the position of ombudsman. Any vacancy occurring in the position  
37 of ombudsman shall be filled in the same manner as the original  
38 appointment. If the ombudsman shall be unable for any reason to  
39 serve the full term of office, the Governor may designate an acting  
40 ombudsman until a successor is appointed and qualified.  
41

42 3. a. The ombudsman shall:

43 (1) receive, review, and attempt to resolve any complaints from  
44 student education loan borrowers, including, but not limited to,  
45 attempts to resolve those complaints in collaboration with  
46 institutions of higher education, student loan servicers, and any  
47 other participants in student education loan lending;

- 1 (2) compile and analyze data on student loan borrower  
2 complaints as described in paragraph (1) of this subsection;
- 3 (3) assist student loan borrowers to understand their rights and  
4 responsibilities under the terms of student education loans;
- 5 (4) provide information to the public, agencies, legislators, and  
6 others regarding the problems and concerns of student loan  
7 borrowers, and make recommendations for resolving those  
8 problems and concerns;
- 9 (5) analyze and monitor the development and implementation of  
10 federal, State, and local laws, regulations, and policies relating to  
11 student loan borrowers and recommend any changes the Student  
12 Loan Ombudsman deems necessary;
- 13 (6) review the complete student education loan history for any  
14 student loan borrower who has provided written consent for review;
- 15 (7) disseminate information concerning the availability of the  
16 Student Loan Ombudsman to assist student loan borrowers and  
17 potential student loan borrowers, as well as public institutions of  
18 higher education, student loan servicers, and any other participant  
19 in student education loan lending, with any student loan servicing  
20 concerns; and
- 21 (8) take any other actions necessary to fulfill the duties of the  
22 Student Loan Ombudsman as set forth in this section.
- 23 b. No later than October 1, 2018, the Student Loan  
24 Ombudsman, in consultation with the commissioner, shall establish  
25 and maintain a student loan borrower education course that shall  
26 include educational presentations and materials regarding student  
27 education loans. The program shall include, but not be limited to,  
28 key loan terms, documentation requirements, monthly payment  
29 obligations, income-based repayment options, loan forgiveness, and  
30 disclosure requirements.
- 31 c. No later than January 1, 2018, and annually thereafter, the  
32 commissioner shall submit a report to the standing committees of  
33 the General Assembly and Senate having cognizance of matters  
34 relating to banking and higher education. The commissioner shall  
35 report on: (1) the implementation of this section; (2) the overall  
36 effectiveness of the Student Loan Ombudsman position; and (3)  
37 additional steps that need to be taken for the Department of Banking  
38 and Insurance to gain regulatory control over the licensing and  
39 enforcement of student loan servicers.
- 40
- 41 4. a. (1) No person shall act as a student loan servicer, directly  
42 or indirectly, without first obtaining a license from the  
43 commissioner under subsection b. of this section, unless that person  
44 is exempt from licensure pursuant to paragraph (2) of this  
45 subsection.
- 46 (2) The following persons are exempt from subsection a. of this  
47 section: (a) any State or federally chartered bank, savings bank,  
48 savings and loan association, or credit union; (b) any wholly owned

1 subsidiary of any bank or credit union; and (c) any operating  
2 subsidiary where each owner of the operating subsidiary is wholly  
3 owned by the same bank or credit union.

4 b. Any person seeking to act within this State as a student loan  
5 servicer shall make a written application to the commissioner for an  
6 initial license in the form prescribed by the commissioner. The  
7 application shall be accompanied by:

8 (1) a financial statement prepared by a certified public  
9 accountant or a public accountant, the accuracy of which is sworn  
10 to under oath before a notary public by the applicant, proprietor, a  
11 general partner or a corporate officer, or a member duly authorized  
12 to execute those documents;

13 (2) (a) the history of criminal convictions of the: (i) applicant;  
14 (ii) partners, if the applicant is a partnership; (iii) members, if the  
15 applicant is a limited liability company or association; or (iv)  
16 officers, directors and principal employees, if the applicant is a  
17 corporation; and

18 (b) sufficient information pertaining to the history of criminal  
19 convictions of that applicant, partners, members, officers, directors  
20 or principal employees as the commissioner deems necessary to  
21 make the findings under subsection c. of this section;

22 (3) a nonrefundable license fee of \$1,000; and

23 (4) a nonrefundable investigation fee of \$800.

24 The commissioner may conduct a State and national criminal  
25 history records check of the applicant and of each partner, member,  
26 officer, director and principal employee of the applicant.

27 c. Upon the filing of an application for an initial license and  
28 the payment of the fees for license and investigation, the  
29 commissioner shall investigate the financial condition and  
30 responsibility, financial and business experience, character and  
31 general fitness of the applicant. The commissioner may issue a  
32 license if the commissioner finds that:

33 (1) the applicant's financial condition is sound;

34 (2) the applicant's business will be conducted honestly, fairly,  
35 equitably, carefully and efficiently within the purposes and intent of  
36 this act, and in a manner commanding the confidence and trust of  
37 the community;

38 (3) (a) if the applicant is an individual, the individual is in all  
39 respects properly qualified and of good character;

40 (b) if the applicant is a partnership, each partner is in all  
41 respects properly qualified and of good character;

42 (c) if the applicant is a corporation or association, the president,  
43 chairperson of the executive committee, senior officer responsible  
44 for the corporation's business and chief financial officer or any  
45 other person who performs similar functions as determined by the  
46 commissioner, each director, each trustee and each shareholder  
47 owning 10 percent or more of each class of the securities of the

1 corporation is in all respects properly qualified and of good  
2 character; or  
3 (d) if the applicant is a limited liability company, each member  
4 is in all respects properly qualified and of good character;  
5 (4) neither the applicant nor any person on behalf of the  
6 applicant knowingly has made any incorrect statement of a material  
7 fact in the application, or in any report or statement made pursuant  
8 to this act;  
9 (5) neither the applicant nor any person on behalf of the  
10 applicant knowingly has omitted to state any material fact necessary  
11 to give the commissioner any information lawfully required by the  
12 commissioner;  
13 (6) the applicant has paid the investigation fee and the license  
14 fee required under subsection b. of this section; and  
15 (7) the applicant has met any other similar requirements as  
16 determined by the commissioner.  
17 d. A license issued pursuant to subsection c. of this section  
18 shall expire at the close of business on September 30 of the odd-  
19 numbered year following its issuance, unless renewed or earlier  
20 surrendered, suspended or revoked pursuant to this act. Not later  
21 than 15 days after a licensee ceases to engage in the business of  
22 student loan servicing in this State for any reason, including a  
23 business decision to terminate operations in this State, license  
24 revocation, bankruptcy or voluntary dissolution, the licensee shall  
25 provide written notice of surrender to the commissioner and shall  
26 surrender to the commissioner its license for each location in which  
27 the licensee has ceased to engage in business. The written notice of  
28 surrender shall identify the location where the records of the  
29 licensee will be stored and the name, address and telephone number  
30 of an individual authorized to provide access to the records. The  
31 surrender of a license does not reduce or eliminate the licensee's  
32 civil or criminal liability arising from acts or omissions occurring  
33 prior to the surrender of the license, including any administrative  
34 actions undertaken by the commissioner to revoke or suspend a  
35 license, assess a civil penalty, order restitution or exercise any other  
36 authority provided to the commissioner.  
37 e. A license may be renewed for the ensuing 24 month period  
38 upon the filing of an application containing all required documents  
39 and fees as provided in subsection b. of this section. The renewal  
40 application shall be filed on or before September 1 of the year in  
41 which the license expires. Any renewal application filed with the  
42 commissioner after September 1 shall be accompanied by a \$100  
43 late fee. If an application for a renewal license has been filed with  
44 the commissioner on or before the date the license expires, the  
45 license sought to be renewed shall continue in full force and effect  
46 until the issuance by the commissioner of the renewal license  
47 applied for or until the commissioner has notified the licensee in  
48 writing of the commissioner's refusal to issue the renewal license

1 together with the grounds upon which that refusal is based. The  
2 commissioner may refuse to issue a renewal license on any ground  
3 on which the commissioner might refuse to issue an initial license.

4 f. The applicant or licensee shall notify the commissioner, in  
5 writing, of any change in the information provided in its initial  
6 application for a license or its most recent renewal application for  
7 the license, as applicable, not later than 10 business days after the  
8 occurrence of the event that results in the information becoming  
9 inaccurate.

10 g. The commissioner may deem an application for a license  
11 abandoned if the applicant fails to respond to any request for  
12 information required under this act. The commissioner shall notify  
13 the applicant, in writing, that if the applicant fails to submit any  
14 information not later than 60 days after the date on which the  
15 request for information was made, the application shall be deemed  
16 abandoned. An application filing fee paid prior to the date an  
17 application is deemed abandoned pursuant to this subsection shall  
18 not be refunded. Abandonment of an application pursuant to this  
19 subsection shall not preclude the applicant from submitting a new  
20 application for a license under the provisions of this act.

21

22 5. No person licensed to act within this State as a student loan  
23 servicer shall do so under any other name or at any other place of  
24 business than that named in the license. Any change of location of a  
25 place of business of a licensee shall require prior written notice to  
26 the commissioner. Not more than one place of business shall be  
27 maintained under the same license but the commissioner may issue  
28 more than one license to the same licensee upon compliance with  
29 the provisions of this act as to each new licensee. A license shall  
30 not be transferable or assignable.

31

32 6. a. Each student loan servicer licensee and persons exempt  
33 from licensure pursuant to paragraph (2) of subsection a. of section  
34 4 of this act shall maintain adequate records of each student  
35 education loan transaction for not less than two years following the  
36 final payment on that student education loan or the assignment of  
37 that student education loan, whichever occurs first, or any longer  
38 period as may be required by any other provision of law.

39 b. If requested by the commissioner, each student loan servicer  
40 shall make records available or send records to the commissioner by  
41 registered or certified mail, return receipt requested, or by any  
42 express delivery carrier that provides a dated delivery receipt, not  
43 later than five business days after requested by the commissioner to  
44 do so. Upon request, the commissioner may grant a licensee  
45 additional time to make records available or send the records to the  
46 commissioner.

47

48 7. No student loan servicer shall:

- 1 a. directly or indirectly employ any scheme, device or artifice  
2 to defraud or mislead student loan borrowers;
  - 3 b. engage in any unfair or deceptive practice toward any person  
4 or misrepresent or omit any material information in connection with  
5 the servicing of a student education loan, including, but not limited  
6 to, misrepresenting the amount, nature or terms of any fee or  
7 payment due or claimed to be due on a student education loan, the  
8 terms and conditions of the loan agreement or the borrower's  
9 obligations under the loan;
  - 10 c. obtain property by fraud or misrepresentation;
  - 11 d. knowingly misapply or recklessly apply student education  
12 loan payments to the outstanding balance of a student education  
13 loan;
  - 14 e. knowingly or recklessly provide inaccurate information to a  
15 credit bureau, thereby harming a student loan borrower's  
16 creditworthiness;
  - 17 f. fail to report both the favorable and unfavorable payment  
18 history of the student loan borrower to a nationally recognized  
19 consumer credit bureau at least annually if the student loan servicer  
20 regularly reports information to a credit bureau;
  - 21 g. refuse to communicate with an authorized representative of  
22 the student loan borrower who provides a written authorization  
23 signed by the student loan borrower, provided the student loan  
24 servicer may adopt procedures reasonably related to verifying that  
25 the representative is in fact authorized to act on behalf of the  
26 student loan borrower; or
  - 27 h. negligently make any false statement or knowingly and  
28 willfully make any omission of a material fact in connection with  
29 any information or reports filed with a governmental agency or in  
30 connection with any investigation conducted by the commissioner  
31 or another governmental agency.
- 32
- 33 8. a. In addition to any authority provided under Title 17 of the  
34 Revised Statutes, the commissioner shall have the authority to  
35 conduct investigations and examinations as follows:
    - 36 (1) For purposes of initial licensing, license renewal, license  
37 suspension, license revocation or termination, or general or specific  
38 inquiry or investigation to determine compliance with this act, the  
39 commissioner may access, receive and use any books, accounts,  
40 records, files, documents, information or evidence including, but  
41 not limited to: (a) criminal, civil and administrative history  
42 information; (b) personal history and experience information,  
43 including independent credit reports obtained from a consumer  
44 reporting agency described in Section 603(p) of the "Fair Credit  
45 Reporting Act" (15 U.S.C. s.1681a); and (c) any other documents,  
46 information or evidence the commissioner deems relevant to the  
47 inquiry or investigation regardless of the location, possession,  
48 control or custody of documents, information or evidence.

1       (2) For the purposes of investigating violations or complaints  
2 arising under this act or for the purposes of examination, the  
3 commissioner may review, investigate or examine any student loan  
4 servicer licensee or person subject to this act. The commissioner  
5 may direct, subpoena or order the attendance of and examine under  
6 oath all persons whose testimony may be required about the student  
7 education loan or the business or subject matter of any examination  
8 or investigation, and may direct, subpoena or order any person  
9 subject to this act to produce books, accounts, records, files and any  
10 other documents the commissioner deems relevant to the inquiry.

11       b. In making any examination or investigation authorized by  
12 this section, the commissioner may control access to any documents  
13 and records of the student loan servicer licensee or person under  
14 examination or investigation. The commissioner may take  
15 possession of the documents and records or place a person in  
16 exclusive charge of the documents and records in the place where  
17 they are usually kept. During the period of control, no person shall  
18 remove or attempt to remove any of the documents and records  
19 except pursuant to a court order or with the consent of the  
20 commissioner. Unless the commissioner has reasonable grounds to  
21 believe the documents or records of the student loan servicer  
22 licensee or person have been, or are at risk of being, altered or  
23 destroyed for purposes of concealing a violation of this act, the  
24 student loan servicer licensee or owner of the documents and  
25 records shall have access to the documents or records as necessary  
26 to conduct its ordinary business affairs.

27       c. In order to carry out the purposes of this section, the  
28 commissioner may:

29       (1) retain attorneys, accountants or other professionals and  
30 specialists as examiners, auditors or investigators to conduct or  
31 assist in the conduct of examinations or investigations;

32       (2) enter into agreements or relationships with other government  
33 officials or regulatory associations in order to improve efficiencies  
34 and reduce regulatory burden by sharing resources, standardized or  
35 uniform methods or procedures, and documents, records,  
36 information or evidence obtained under this section;

37       (3) use, hire, contract or employ public or privately available  
38 analytical systems, methods or software to examine or investigate  
39 the student loan servicer licensee or any person subject to this act;

40       (4) accept and rely on examination or investigation reports made  
41 by other government officials, within or without this State; and

42       (5) accept audit reports made by an independent certified public  
43 accountant for the student loan servicer licensee or person subject to  
44 this act in the course of that part of the examination covering the  
45 same general subject matter as the audit and may incorporate the  
46 audit report in the report of examination, report of investigation or  
47 other writing of the commissioner.



1 d. The authority of this section shall remain in effect, whether  
2 the student loan servicer licensee or person subject to this act, acts  
3 or claims to act under any licensing or registration law of this State,  
4 or claims to act without that authority.

5 e. No student loan servicer licensee or person subject to  
6 investigation or examination under this section may knowingly  
7 withhold, abstract, remove, mutilate, destroy or secrete any books,  
8 records, computer records or other information.

9  
10 9. a. The commissioner may suspend, revoke or refuse to  
11 renew any license issued under the provisions of subsection c. of  
12 section 4 of this act, or take any other action, if the commissioner  
13 finds that: (1) the licensee has violated any provision of this act or  
14 any regulation made pursuant to this act; or (2) any fact or condition  
15 exists which, if it had existed at the time of the original application  
16 for the license, clearly would have warranted a denial of the license.  
17 No abatement of the license fee shall be made if the license is  
18 surrendered, revoked, or suspended prior to the expiration of the  
19 period for which it was issued.

20 b. (1) Whenever it appears to the commissioner that any person  
21 has violated, is violating or is about to violate any of the provisions  
22 of this act, or any regulation adopted pursuant to this act, or any  
23 licensee or any owner, director, officer, member, partner,  
24 shareholder, trustee, employee or agent of a licensee has committed  
25 any fraud, engaged in dishonest activities or made any  
26 misrepresentation, the commissioner may bring a civil suit in a  
27 court of competent jurisdiction to enjoin the violation or potential  
28 violation, seek civil penalties pursuant to paragraph (2) of this  
29 subsection, or both.

30 (2) Any person who violates any provision of this act shall be  
31 liable, in a civil action brought by the commissioner in a court of  
32 competent jurisdiction, for a penalty of not more than \$5,000 for the  
33 first violation, \$10,000 for the second violation and \$15,000 for  
34 each subsequent violation. The penalty shall be paid to the  
35 commissioner to be used in accordance with this act and shall be  
36 collected pursuant to the "Penalty Enforcement Law of 1999,"  
37 P.L.1999, c.274 (C.2A:58-10 et seq.). The court shall also award  
38 court costs and reasonable attorneys' fees to the commissioner.

39  
40 10. A student loan servicer shall comply with all applicable  
41 federal laws and regulations relating to student loan servicing,  
42 including, but not limited to, the "Truth in Lending Act" (15 U.S.C.  
43 s.1601 et seq.). In addition to any other remedies provided by law,  
44 a violation of any federal law or regulation shall be deemed a  
45 violation of this section and a basis upon which the commissioner  
46 may take enforcement action pursuant to section 9 of this act.

1 11. All costs of the implementation of this act shall be regarded  
2 as administrative costs of the Department of Banking and Insurance.  
3 Moneys collected from license fees, inspections, or violations  
4 pursuant to this act shall be expended by the commissioner for the  
5 purpose of administering the provisions of this act.

6  
7 12. The Commissioner of Banking and Insurance shall, in  
8 accordance with the "Administrative Procedure Act," P.L.1968,  
9 c.410 (C.52:14B-1 et seq.), adopt the rules and regulations  
10 necessary to implement the provisions of this act.

11  
12 13. This act shall take effect on the 120th day next following  
13 enactment, provided that the Commissioner of Banking and  
14 Insurance may take any anticipatory actions necessary to implement  
15 the provisions of this act.

16  
17  
18 STATEMENT

19  
20 This bill establishes the Office of the Student Loan Ombudsman  
21 within the Department of Banking and Insurance. Under the bill,  
22 the ombudsman will, at a minimum:

23 (1) receive, review, and attempt to resolve any complaints from  
24 student loan borrowers;

25 (2) compile and analyze data on student loan borrower  
26 complaints;

27 (3) assist student loan borrowers to understand their rights and  
28 responsibilities;

29 (4) provide information and make recommendations to the  
30 public, agencies, legislators, and others regarding the problems and  
31 concerns of student loan borrowers;

32 (5) analyze and monitor the development and implementation of  
33 federal, State, and local laws, regulations, and policies relating to  
34 student loan borrowers;

35 (6) review the complete student education loan history for any  
36 student loan borrower who has provided written consent for review;  
37 and

38 (7) disseminate information concerning the availability of the  
39 Student Loan Ombudsman to assist student loan borrowers and  
40 potential student loan borrowers.

41 Under the bill, no later than October 1, 2018, the ombudsman, in  
42 consultation with the commissioner, is required to establish and  
43 maintain a student loan borrower education course that will include  
44 educational presentations and materials regarding student education  
45 loans.

46 The bill also regulates student loan servicers. Under the bill,  
47 student loan servicers are required to obtain a license from the  
48 commissioner before directly or indirectly acting as a student loan

1 servicer. State or federally chartered banks, savings banks, savings  
2 and loan associations, and credit unions are exempt from the  
3 licensure requirement. Any person seeking to act within the State  
4 as a student loan servicer must make a written application to the  
5 commissioner accompanied by:

- 6 (1) a financial statement prepared by a certified public  
7 accountant or a public accountant;
- 8 (2) the history of criminal convictions of the applicant or certain  
9 other individuals in the case of certain business entities; and
- 10 (3) certain licensure fees.

11 Upon the filing of an application for an initial license and the  
12 payment of the fees for license and investigation, the commissioner  
13 will investigate the financial condition and responsibility, financial  
14 and business experience, character and general fitness of the  
15 applicant.

16 The bill provides that licenses expire at the close of business on  
17 September 30 of the odd-numbered year following their issuance,  
18 unless renewed or earlier surrendered, suspended or revoked. The  
19 bill establishes procedures for license renewal and surrender.

20 The bill requires student loan servicers, and certain other entities  
21 exempt from the other requirements of the bill, to maintain student  
22 loan records for at least two years following final payment or  
23 assignment of the loan. The records are to be provided to the  
24 commissioner for inspection upon request.

25 The bill grants the commissioner the authority to conduct certain  
26 investigations and examinations for purposes of initial licensing,  
27 license renewal, license suspension, license revocation or  
28 termination, or general or specific inquiry or investigation to  
29 determine compliance, in which the commissioner may access,  
30 receive and use any books, accounts, records, files, documents,  
31 information or evidence.

32 The bill also provides that any person who violates any provision  
33 of this act will be liable, in a civil action brought by the  
34 commissioner in a court of competent jurisdiction, for a penalty of  
35 not more than \$5,000 for the first violation, \$10,000 for the second  
36 violation and \$15,000 for each subsequent violation.