

1 H BILL NO. 180

2 INTRODUCED BY JOHN BOHLINGER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE SUSPENSION OF STATE-ISSUED
5 PROFESSIONAL AND OCCUPATIONAL LICENSES OF DEBTORS WHO HAVE DEFAULTED ON A
6 GUARANTEED STUDENT LOAN AND WHO HAVE REFUSED TO ENTER INTO A REPAYMENT AGREEMENT
7 WITH THE MONTANA STUDENT LOAN PROGRAM; AND AMENDING SECTION 20-26-1101, MCA."

8

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

10

11 **NEW SECTION. Section 1. Notice of intent to suspend license.** (1) An agency may issue a notice
12 of intent to suspend a license when a delinquency in repayment of a guaranteed student loan occurs.

13 (2) The notice must:

14 (a) be served upon the debtor personally or by certified mail with return receipt requested; and

15 (b) state that the debtor's license will be suspended 90 days after service unless within that time
16 the debtor:

17 (i) pays the entire debt stated in the notice; or

18 (ii) enters into a payment plan approved by the agency.

19

20 **NEW SECTION. Section 2. Hearing -- order suspending license.** (1) To show cause why
21 suspension of a license under [section 1] is inappropriate, the debtor may, within 30 days of the date of
22 service of the notice, request a hearing from the agency.

23 (2) The agency, upon receipt of a request for hearing from a debtor, shall schedule a hearing to
24 determine whether suspension of the debtor's license is appropriate. The debtor's license may not be
25 suspended until a determination is reached following the hearing.

26 (3) The only issues that may be determined in a hearing under this section are:

27 (a) the amount of the debt, if any;

28 (b) whether the debtor is delinquent; and

29 (c) whether the debtor has entered into a payment plan.

30 (4) If a debtor fails to respond to a notice of intent to suspend a license, fails to timely request a

1 hearing, or fails to appear at a regularly scheduled hearing, the debtor's defenses, objections, or request
2 for a payment plan may be determined to be without merit and the agency shall enter a final decision and
3 order accordingly.

4 (5) If the agency determines that the debtor is delinquent or has not entered into a payment plan,
5 the agency shall issue an order requesting suspension of the debtor's license and order the debtor to refrain
6 from engaging in the licensed activity. The agency shall send a copy of the order requesting suspension
7 of a license to the licensing authority and the debtor.

8 (6) The debtor may appeal any finding of the agency to the commissioner of higher education and
9 to the board, and any appeal is governed by the appeals procedures of the board. An action to suspend
10 the license must be stayed during the time of appeal.

11 (7) A determination made by the agency under this section is independent of any proceeding of
12 the licensing authority to suspend, revoke, deny, terminate, or renew a license.

13

14 **NEW SECTION. Section 3. Suspension, denial, and nonrenewal of licenses.** (1) Upon receipt of
15 an order suspending a license, a licensing authority shall implement the suspension of the license by:

16 (a) determining if it has issued a license to the debtor whose name appears on the order;

17 (b) entering the suspension on the appropriate records;

18 (c) reporting the suspension as appropriate; and

19 (d) if required by law, demanding surrender of the suspended license.

20 (2) An order issued by the agency suspending a license must be processed by the licensing
21 authority without any additional review or hearing concerning suspension of the license.

22 (3) Notwithstanding the provisions of any other law establishing terms of suspension, revocation,
23 denial, termination, or renewal of a license, an order issued by the agency suspending a license must be
24 implemented by the licensing authority and continues until the agency advises the licensing authority that
25 the suspension has been stayed or terminated.

26 (4) If a license is suspended, any funds paid by the debtor to the licensing authority for costs
27 related to issuance, renewal, or maintenance of a license may not be refunded to the debtor.

28 (5) Unless an order staying suspension of a license is in effect, a debtor who continues to engage
29 in the business, occupation, profession, or other licensed activity while the debtor's license is suspended
30 under this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less

1 than \$250 or more than \$500 or by imprisonment in the county jail for a term not to exceed 6 months, or
2 both. Upon conviction of a second or subsequent violation, the debtor shall be punished by a fine of not
3 less than \$500 or more than \$2,000 or by imprisonment in the county jail for a term not to exceed 1 year,
4 or both. The agency or the licensing authority may elect the remedy under this section or any other remedy
5 provided for engaging in a licensed activity without a license or while the license is suspended.

6 (6) The licensing authority is exempt from liability to the licensee for activities conducted in
7 compliance with [sections 1 through 7].

8 (7) The licensing authority has no jurisdiction to modify, remand, reverse, vacate, or stay the order
9 of the agency suspending a license.

10 (8) To the extent that inconsistencies exist between [sections 1 through 7] and the procedural
11 requirements for suspension of a license issued by the licensing authority, [sections 1 through 7] supersede
12 those requirements.

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14 **NEW SECTION. Section 4. Nondisciplinary suspension for failure to pay on defaulted student loan.**

15 Notwithstanding any other provision of this title, the agency has the authority to suspend a license under
16 [sections 1 through 7] without any action by the licensing authority. The licensing authority shall, upon
17 receipt of an order issued by the agency, suspend the license of the named individual. The suspension
18 must be nondisciplinary for professional or occupational licenses, and the provisions of 2-4-631 do not
19 apply.

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21 **NEW SECTION. Section 5. Stay of suspension of license -- payment plan -- hardship.** (1) A debtor

22 may, at the time of the hearing conducted under [section 2] or at any time after the hearing, petition the
23 agency for an order staying suspension of the license.

24 (2) The agency shall consider the debtor's petition for a stay separately from any determination
25 on whether suspension of a license is appropriate.

26 (3) The agency may stay suspension of a license upon a showing that suspension or continued
27 suspension of a license would create a significant hardship to the debtor, to the debtor's employees, to
28 legal dependents residing in the debtor's household, or to persons, businesses, or other entities served by
29 the debtor.

30 (4) A stay terminates upon:

1 (a) termination of the circumstances upon which a significant hardship is based;

2 (b) failure by the debtor to abide by the terms and conditions of a payment plan; or

3 (c) the date of termination, if any, provided in the order staying suspension of the license.

4 (5) If the licensing authority has been notified of an order suspending a license, the agency shall
5 send a copy of any order staying or reinstating suspension of the license to the licensing authority and the
6 debtor.

7 (6) (a) Upon receipt of an order staying or reinstating suspension of the license, the licensing
8 authority shall:

9 (i) enter the information on appropriate records;

10 (ii) report the action as appropriate; and

11 (iii) as appropriate, demand surrender of the suspended license or return the reinstated license.

12 (b) Further action by the licensing authority is not necessary to implement the stay or reinstatement
13 of suspension of the license.

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15 **NEW SECTION. Section 6. Termination of order to suspend license.** (1) When the agency
16 determines that the debt is paid in full or the debtor has entered into a payment plan approved by the
17 agency, the agency shall terminate the order suspending the license. The agency shall send a copy of the
18 order terminating the suspension of the license to the licensing authority and the debtor.

19 (2) Entry of an order terminating suspension of a license does not limit the ability of the agency
20 to issue a new order suspending the license of the same debtor in the event of another delinquency.

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22 **NEW SECTION. Section 7. Fees.** A licensing authority subject to this part may charge the debtor
23 a fee to cover the administrative costs incurred by the licensing authority under this part. Fees collected
24 pursuant to this section by a licensing authority with a state special revenue fund must be deposited in the
25 state special revenue fund for the use of the licensing authority to pay the costs of administering [sections
26 1 through 7]. Fees collected pursuant to this section by a licensing authority without a state special
27 revenue fund must be deposited in the general fund.

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29 **Section 8.** Section 20-26-1101, MCA, is amended to read:

30 **"20-26-1101. Definitions.** As used in this part, unless the context clearly indicates otherwise, the

1 following definitions apply:

2 (1) "Agency" means the entity designated by the board to administer student loans.

3 ~~(1)(2)~~ "Board" means the board of regents of higher education.

4 ~~(2) "Corporation" means the corporation designated by the board to administer student loans.~~

5 (3) "Council" means the guaranteed student loan advisory council established in 2-15-1520.

6 (4) "Delinquency" means the failure of a debtor to abide by the terms of payment on a promissory
 7 note or other obligation created in return for an educational student loan, which failure has existed for at
 8 least 6 months and has resulted in an arrearage equal to or greater than six monthly payments called for
 9 by the note or obligation.

10 ~~(4)(5)~~ "Eligible educational institution" means any institution approved by the United States
 11 commissioner of education as eligible to participate in the guaranteed student loan program pursuant to Title
 12 IV of the Higher Education Act of 1965, as amended.

13 ~~(5)(6)~~ "Guaranteed student loan program" means the program established by the board pursuant
 14 to this part.

15 (7) "License" means a license, certificate, registration, or authorization issued by an agency of the
 16 state of Montana granting a person a right or privilege to engage in a business, occupation, or profession
 17 or any other privilege that is subject to suspension, revocation, forfeiture, or termination by the licensing
 18 authority prior to its date of expiration.

19 (8) "Licensing authority" means any department, division, board, agency, or instrumentality of this
 20 state that issues a license.

21 (9) "Order suspending a license" means an order issued by the agency to suspend a license. The
 22 order must contain the name of the debtor, the type of license, and the social security number of the
 23 debtor.

24 (10) "Payment plan" includes but is not limited to a plan approved by the agency that provides
 25 sufficient security to ensure compliance with Title IV of the Higher Education Act of 1965, as amended,
 26 and that incorporates voluntary or involuntary income withholding or a similar plan for periodic payment
 27 of the debt outstanding."

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29 **NEW SECTION. Section 9. Two-thirds vote required.** Because [section 3] limits governmental
 30 liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of

1 each house of the legislature for passage.

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3 NEW SECTION. **Section 10. Codification instruction.** [Sections 1 through 7] are intended to be
4 codified as an integral part of Title 20, chapter 26, part 11, and the provisions of Title 20, chapter 26, part
5 11, apply to [sections 1 through 7].

6 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0180, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for the suspension of state-issued professional and occupational licenses of debtors who have defaulted on a guaranteed student loan and who have refused to enter into a repayment agreement with the Montana Student Loan Program.

ASSUMPTIONS:

1. The Montana Student Loan Program anticipates pursuing 12 actions per year.
2. Due process concerns will be addressed through hearings held by the Commissioner of Higher Education (CHE).
3. The licensing boards will implement license suspensions.
4. No additional expense to the Guaranteed Student Loan Program (GSLP) is anticipated to comply with the proposed legislation. The GSLP may experience a cost savings because it will not have to litigate through the court system, as is currently necessary. The agency already has a hearing process in place for administrative wage garnishment and tax offset appeals. This same hearing process can be used for licensure suspension appeals.
5. The GSLP anticipates it will be able to collect a minimum of \$780,000 additional funds per year under the proposed legislation. The figure was derived by estimating 5% of the debtors (300 debtors), having borrowed only once under the loan program at the freshman level of \$2,625, who might be affected by this legislation.
6. The GSLP currently has identified six borrowers owing \$237,290 who have professional licenses that could be affected by this legislation.
7. Twenty-seven percent of the increased collections will be retained by GSL for administrative purposes. The remainder would be transferred to the Federal Department of Education
8. The Department of Justice (DOJ), Motor Vehicle Division will need to complete computer programming changes to accommodate the effects of this bill. One-time costs for approximately 80 hours of programming time are estimated at \$1,600 for the DOJ, Motor Vehicle Division. The GSLP will pay this one-time cost from its collections which will be state special revenue to the DOJ.
9. Without information indicating otherwise, it is assumed that other administrative actions would be taken and other professional licenses would be affected before any action would be taken affecting an individuals driver's license. Therefore, at this time the department does not anticipate a substantial impact due to the implementation of this bill.
10. The Gambling Control Division estimates minimal impact due to the bill.

FISCAL IMPACT:

Department of Justice
Motor Vehicle Division:

Expenditures:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Operating Expenses	1,600	0

Funding:

GSL Operating Account (02)	1,600	0
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Department of Commerce
POL Bureau and Commissioner of Higher Education
Montana Student Loan Program:
None

David Lewis 1-16-97
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

JOHN BOHLINGER, PRIMARY SPONSOR DATE

Fiscal Note for HB0180, as introduced

HB 180

STATE OF MONTANA - FISCAL NOTE

Revised Fiscal Note for HB0180, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill providing for the suspension of state-issued professional and occupational licenses of debtors who have defaulted on a guaranteed student loan, and who have refused to enter into a repayment agreement with the Montana Guaranteed Student Loan Program (GSLP).

ASSUMPTIONS:

1. Of the current total 6,000 GSLP debtors, assume that 1% will possess a professional license in Montana, or 60 (1% x 6,000) debtors. The average amount owed by the 60 is \$2,625 (which approximates the freshman level).
2. A letter will be sent and received by all selected debtors. The letter will threaten suspension of their professional license if the student debt is not paid in full or an acceptable payment schedule is approved by GSLP.
3. Assume that 50% of those contacted will respond with a check in payment of the full amount of the debt, or \$79,000 (60 x 50% x \$2,625).
4. Assume that 40% will agree to a time-pay plan paying 20%/year over five years. FY98 and FY99 revenue will be \$12,600 (60 x 40% x 2,625 x 20%).
5. For the remaining 10%, or 6 debtors, GSLP will recommend to the Department of Commerce (DOC) that their licenses will be suspended. DOC will perform this function without additional cost.
6. In FY99, 500 new debtors will be added to the file. With the same assumptions used above, \$6,500 will be received as total pay, and \$2,100 as time-pay.
7. GSLP will retain 27% of the revenue to be used for administrative purposes, and the remaining 73% will be transferred to the federal Department of Education. Thus in FY98, total revenue is \$91,600 (\$79,00 + 12,600), of which the GSLP will retain \$24,700 (\$91,600 x 27%). In FY99, total revenue is \$21,200 (12,600 + 6,500 + 2,100), of which GSLP will retain \$5,700 (\$21,200 x 27%).
8. The definition of license in Section 8 of the bill does not include a driver's license and, therefore, the Department of Justice is not affected.

FISCAL IMPACT:

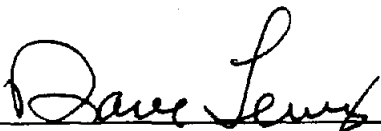
<u>Expenditures:</u>	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
GSLP:		
Transfer to federal (02)	\$66,900	\$15,500
 <u>Revenues:</u>		
Loan collections (02)	\$91,600	\$21,200
 <u>Net Impact to Fund Balance:</u> (revenues minus expense)		
GSLP Operating account (02)	\$24,700	\$5,700

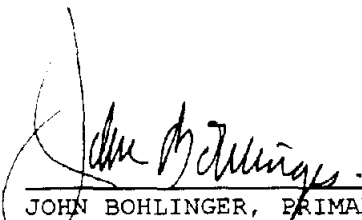
Long-Range Effects on Proposed Legislation:

While this bill provides an initial window of opportunity, there will be a significant reduction of revenues in future years.

Technical Note:

The original fiscal note did not show the effect of increased collections. OBPP subsequently contacted two states who confirmed the collection projections so we revised the fiscal note.

 1-22-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 1-22-97
 JOHN BOHLINGER, PRIMARY SPONSOR DATE

Rev. Fiscal Note for HB0180, as introduced

Rev. HB 180 #2

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the debtor:

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suspension of a license under [section 1] is inappropriate, the debtor may, within 30 days of the date of
service of the notice, request a hearing from the agency.

(2) The agency, upon receipt of a request for hearing from a debtor, shall schedule a hearing to
determine whether suspension of the debtor's license is appropriate. The debtor's license may not be
suspended until a determination is reached following the hearing.

(3) The only issues that may be determined in a hearing under this section are:

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- (c) whether the debtor has entered into a payment plan.

(4) If a debtor fails to respond to a notice of intent to suspend a license, fails to timely request a

1 hearing, or fails to appear at a regularly scheduled hearing, the debtor's defenses, objections, or request
2 for a payment plan may be determined to be without merit and the agency shall enter a final decision and
3 order accordingly.

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9 to the board, and any appeal is governed by the appeals procedures of the board. An action to suspend
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15 an order suspending a license, a licensing authority shall implement the suspension of the license by:

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21 authority without any additional review or hearing concerning suspension of the license.

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23 denial, termination, or renewal of a license, an order issued by the agency suspending a license must be
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25 the suspension has been stayed or terminated.

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27 related to issuance, renewal, or maintenance of a license may not be refunded to the debtor.

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29 in the business, occupation, profession, or other licensed activity while the debtor's license is suspended
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8 (7) The licensing authority has no jurisdiction to modify, remand, reverse, vacate, or stay the order
9 of the agency suspending a license.

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12 those requirements.

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23 agency for an order staying suspension of the license.

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25 on whether suspension of a license is appropriate.

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28 legal dependents residing in the debtor's household, or to persons, businesses, or other entities served by
29 the debtor.

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- 5 send a copy of any order staying or reinstating suspension of the license to the licensing authority and the
- 6 debtor.
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17 agency, the agency shall terminate the order suspending the license. The agency shall send a copy of the

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THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

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 - 16 (b) state that the debtor's license will be suspended 90 days after service unless within that time
17 the debtor:
 - 18 (i) pays the entire debt stated in the notice; or
 - 19 (ii) enters into a payment plan approved by the agency.

20
21 NEW SECTION. **Section 2. Hearing -- order suspending license.** (1) To show cause why
22 suspension of a license under [section 1] is inappropriate, the debtor may, within 30 days of the date of
23 service of the notice, request a hearing from the agency.

24 (2) The agency, upon receipt of a request for hearing from a debtor, shall schedule a hearing to
25 determine whether suspension of the debtor's license is appropriate. The debtor's license may not be
26 suspended until a determination is reached following the hearing.

- 27 (3) The only issues that may be determined in a hearing under this section are:
- 28 (a) the amount of the debt, if any;
 - 29 (b) whether the debtor is delinquent; and
 - 30 (c) whether the debtor has entered into a payment plan.

1 (4) If a debtor fails to respond to a notice of intent to suspend a license, fails to timely request a
2 hearing, or fails to appear at a regularly scheduled hearing, the debtor's defenses, objections, or request
3 for a payment plan may be determined to be without merit and the agency shall enter a final decision and
4 order accordingly.

5 (5) If the agency determines that the debtor is delinquent or has not entered into a payment plan,
6 the agency shall issue an order requesting suspension of the debtor's license and order the debtor to refrain
7 from engaging in the licensed activity. The agency shall send a copy of the order requesting suspension
8 of a license to the licensing authority and the debtor.

9 (6) The debtor may appeal any finding of the agency to the commissioner of higher education and
10 to the board, and any appeal is governed by the appeals procedures of the board. An action to suspend
11 the license must be stayed during the time of appeal.

12 (7) A determination made by the agency under this section is independent of any proceeding of
13 the licensing authority to suspend, revoke, deny, terminate, or renew a license.

14

15 **NEW SECTION. Section 3. Suspension, denial, and nonrenewal of licenses.** (1) Upon receipt of
16 an order suspending a license, a licensing authority shall implement the suspension of the license by:

17 (a) determining if it has issued a license to the debtor whose name appears on the order;

18 (b) entering the suspension on the appropriate records;

19 (c) reporting the suspension as appropriate; and

20 (d) if required by law, demanding surrender of the suspended license.

21 (2) An order issued by the agency suspending a license must be processed by the licensing
22 authority without any additional review or hearing concerning suspension of the license.

23 (3) Notwithstanding the provisions of any other law establishing terms of suspension, revocation,
24 denial, termination, or renewal of a license, an order issued by the agency suspending a license must be
25 implemented by the licensing authority and continues until the agency advises the licensing authority that
26 the suspension has been stayed or terminated.

27 (4) If a license is suspended, any funds paid by the debtor to the licensing authority for costs
28 related to issuance, renewal, or maintenance of a license may not be refunded to the debtor.

29 (5) Unless an order staying suspension of a license is in effect, a debtor who continues to engage
30 in the business, occupation, profession, or other licensed activity while the debtor's license is suspended

1 under this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less
2 than \$250 or more than \$500 or by imprisonment in the county jail for a term not to exceed 6 months, or
3 both. Upon conviction of a second or subsequent violation, the debtor shall be punished by a fine of not
4 less than \$500 or more than \$2,000 or by imprisonment in the county jail for a term not to exceed 1 year,
5 or both. The agency or the licensing authority may elect the remedy under this section or any other remedy
6 provided for engaging in a licensed activity without a license or while the license is suspended.

7 (6) The licensing authority is exempt from liability to the licensee for activities conducted in
8 compliance with [sections 1 through 7].

9 (7) The licensing authority has no jurisdiction to modify, remand, reverse, vacate, or stay the order
10 of the agency suspending a license.

11 (8) To the extent that inconsistencies exist between [sections 1 through 7] and the procedural
12 requirements for suspension of a license issued by the licensing authority, [sections 1 through 7] supersede
13 those requirements.

14

15 **NEW SECTION. Section 4. Nondisciplinary suspension for failure to pay on defaulted student loan.**

16 Notwithstanding any other provision of this title, the agency has the authority to suspend a license under
17 [sections 1 through 7] without any action by the licensing authority. The licensing authority shall, upon
18 receipt of an order issued by the agency, suspend the license of the named individual. The suspension
19 must be nondisciplinary for professional or occupational licenses, and the provisions of 2-4-631 do not
20 apply.

21

22 **NEW SECTION. Section 5. Stay of suspension of license -- payment plan -- hardship.** (1) A debtor
23 may, at the time of the hearing conducted under [section 2] or at any time after the hearing, petition the
24 agency for an order staying suspension of the license.

25 (2) The agency shall consider the debtor's petition for a stay separately from any determination
26 on whether suspension of a license is appropriate.

27 (3) The agency may stay suspension of a license upon a showing that suspension or continued
28 suspension of a license would create a significant hardship to the debtor, to the debtor's employees, to
29 legal dependents residing in the debtor's household, or to persons, businesses, or other entities served by
30 the debtor.

- 1 (4) A stay terminates upon:
- 2 (a) termination of the circumstances upon which a significant hardship is based;
- 3 (b) failure by the debtor to abide by the terms and conditions of a payment plan; or
- 4 (c) the date of termination, if any, provided in the order staying suspension of the license.
- 5 (5) If the licensing authority has been notified of an order suspending a license, the agency shall
- 6 send a copy of any order staying or reinstating suspension of the license to the licensing authority and the
- 7 debtor.
- 8 (6) (a) Upon receipt of an order staying or reinstating suspension of the license, the licensing
- 9 authority shall:
- 10 (i) enter the information on appropriate records;
- 11 (ii) report the action as appropriate; and
- 12 (iii) as appropriate, demand surrender of the suspended license or return the reinstated license.
- 13 (b) Further action by the licensing authority is not necessary to implement the stay or reinstatement
- 14 of suspension of the license.

15

16 **NEW SECTION. Section 6. Termination of order to suspend license.** (1) When the agency

17 determines that the debt is paid in full or the debtor has entered into a payment plan approved by the

18 agency, the agency shall terminate the order suspending the license. The agency shall send a copy of the

19 order terminating the suspension of the license to the licensing authority and the debtor.

20 (2) Entry of an order terminating suspension of a license does not limit the ability of the agency

21 to issue a new order suspending the license of the same debtor in the event of another delinquency.

22

23 **NEW SECTION. Section 7. Fees.** A licensing authority subject to this part may charge the debtor

24 a fee to cover the administrative costs incurred by the licensing authority under this part. Fees collected

25 pursuant to this section by a licensing authority with a state special revenue fund must be deposited in the

26 state special revenue fund for the use of the licensing authority to pay the costs of administering [sections

27 1 through 7]. Fees collected pursuant to this section by a licensing authority without a state special

28 revenue fund must be deposited in the general fund.

29

30 **Section 8.** Section 20-26-1101, MCA, is amended to read:

1 **"20-26-1101. Definitions.** As used in this part, unless the context clearly indicates otherwise, the
2 following definitions apply:

3 (1) "Agency" means the entity designated by the board to administer student loans.

4 ~~(1)~~(2) "Board" means the board of regents of higher education.

5 ~~(2) "Corporation" means the corporation designated by the board to administer student loans.~~

6 (3) "Council" means the guaranteed student loan advisory council established in 2-15-1520.

7 (4) "Delinquency" means the failure of a debtor to abide by the terms of payment on a promissory
8 note or other obligation created in return for an educational student loan, which failure has existed for at
9 least 6 months and has resulted in an arrearage equal to or greater than six monthly payments called for
10 by the note or obligation.

11 ~~(4)~~(5) "Eligible educational institution" means any institution approved by the United States
12 commissioner of education as eligible to participate in the guaranteed student loan program pursuant to Title
13 IV of the Higher Education Act of 1965, as amended.

14 ~~(5)~~(6) "Guaranteed student loan program" means the program established by the board pursuant
15 to this part.

16 (7) "License" means a license, certificate, registration, or authorization issued by an agency of the
17 state of Montana granting a person a right or privilege to engage in a business, occupation, or profession
18 or any other privilege that is subject to suspension, revocation, forfeiture, or termination by the licensing
19 authority prior to its date of expiration.

20 (8) "Licensing authority" means any department, division, board, agency, or instrumentality of this
21 state that issues a license.

22 (9) "Order suspending a license" means an order issued by the agency to suspend a license. The
23 order must contain the name of the debtor, the type of license, and the social security number of the
24 debtor.

25 (10) "Payment plan" includes but is not limited to a plan approved by the agency that provides
26 sufficient security to ensure compliance with Title IV of the Higher Education Act of 1965, as amended,
27 and that incorporates voluntary or involuntary income withholding or a similar plan for periodic payment
28 of the debt outstanding."

29
30 **NEW SECTION. Section 9. Two-thirds vote required.** Because [section 3] limits governmental

1 liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of
2 each house of the legislature for passage.

3

4 NEW SECTION. Section 10. Codification instruction. [Sections 1 through 7] are intended to be
5 codified as an integral part of Title 20, chapter 26, part 11, and the provisions of Title 20, chapter 26, part
6 11, apply to [sections 1 through 7].

7

8 NEW SECTION. SECTION 11. REQUIRED VOTE -- VOIDNESS. IF THE TWO-THIRDS VOTE
9 REQUIRED BY [SECTION 9] IS NOT OBTAINED, THEN [SECTIONS 3(6) AND 9] OF [THIS ACT] ARE VOID.

10

-END-

1 HOUSE BILL NO. 180

2 INTRODUCED BY BOHLINGER

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE SUSPENSION OF STATE-ISSUED
 5 ~~PROFESSIONAL AND OCCUPATIONAL~~ LICENSES OF DEBTORS WHO HAVE DEFAULTED ON A
 6 GUARANTEED STUDENT LOAN AND WHO HAVE REFUSED TO ENTER INTO A REPAYMENT AGREEMENT
 7 WITH THE MONTANA STUDENT LOAN PROGRAM; ~~AND~~ AMENDING SECTION 20-26-1101, MCA; AND
 8 PROVIDING FOR VOIDING THE TWO-THIRDS VOTE REQUIREMENT."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
 12 NEW SECTION. **Section 1. Notice of intent to suspend license.** (1) An agency may issue a notice
 13 of intent to suspend a license when a delinquency in repayment of a guaranteed student loan occurs.

14 (2) The notice must:

- 15 (a) be served upon the debtor personally or by certified mail with return receipt requested; and
 16 (b) state that the debtor's license will be suspended 90 days after service unless within that time

17 the debtor:

- 18 (i) pays the entire debt stated in the notice; or
 19 (ii) enters into a payment plan approved by the agency.

20
 21 NEW SECTION. **Section 2. Hearing -- order suspending license.** (1) To show cause why
 22 suspension of a license under [section 1] is inappropriate, the debtor may, within 30 days of the date of
 23 service of the notice, request a hearing from the agency.

24 (2) The agency, upon receipt of a request for hearing from a debtor, shall schedule a hearing to
 25 determine whether suspension of the debtor's license is appropriate. The debtor's license may not be
 26 suspended until a determination is reached following the hearing.

27 (3) The only issues that may be determined in a hearing under this section are:

- 28 (a) the amount of the debt, if any;
 29 (b) whether the debtor is delinquent; and
 30 (c) whether the debtor has entered into a payment plan.

1 (4) If a debtor fails to respond to a notice of intent to suspend a license, fails to timely request a
2 hearing, or fails to appear at a regularly scheduled hearing, the debtor's defenses, objections, or request
3 for a payment plan may be determined to be without merit and the agency shall enter a final decision and
4 order accordingly.

5 (5) If the agency determines that the debtor is delinquent or has not entered into a payment plan,
6 the agency shall issue an order requesting suspension of the debtor's license and order the debtor to refrain
7 from engaging in the licensed activity. The agency shall send a copy of the order requesting suspension
8 of a license to the licensing authority and the debtor.

9 (6) The debtor may appeal any finding of the agency to the commissioner of higher education and
10 to the board, and any appeal is governed by the appeals procedures of the board. An action to suspend
11 the license must be stayed during the time of appeal.

12 (7) A determination made by the agency under this section is independent of any proceeding of
13 the licensing authority to suspend, revoke, deny, terminate, or renew a license.

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15 **NEW SECTION. Section 3. Suspension, denial, and nonrenewal of licenses.** (1) Upon receipt of
16 an order suspending a license, a licensing authority shall implement the suspension of the license by:

17 (a) determining if it has issued a license to the debtor whose name appears on the order;

18 (b) entering the suspension on the appropriate records;

19 (c) reporting the suspension as appropriate; and

20 (d) if required by law, demanding surrender of the suspended license.

21 (2) An order issued by the agency suspending a license must be processed by the licensing
22 authority without any additional review or hearing concerning suspension of the license.

23 (3) Notwithstanding the provisions of any other law establishing terms of suspension, revocation,
24 denial, termination, or renewal of a license, an order issued by the agency suspending a license must be
25 implemented by the licensing authority and continues until the agency advises the licensing authority that
26 the suspension has been stayed or terminated.

27 (4) If a license is suspended, any funds paid by the debtor to the licensing authority for costs
28 related to issuance, renewal, or maintenance of a license may not be refunded to the debtor.

29 (5) Unless an order staying suspension of a license is in effect, a debtor who continues to engage
30 in the business, occupation, profession, or other licensed activity while the debtor's license is suspended

1 under this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less
 2 than \$250 or more than \$500 or by imprisonment in the county jail for a term not to exceed 6 months, or
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 8 compliance with [sections 1 through 7].

9 (7) The licensing authority has no jurisdiction to modify, remand, reverse, vacate, or stay the order
 10 of the agency suspending a license.

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 12 requirements for suspension of a license issued by the licensing authority, [sections 1 through 7] supersede
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 18 receipt of an order issued by the agency, suspend the license of the named individual. The suspension
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 28 suspension of a license would create a significant hardship to the debtor, to the debtor's employees, to
 29 legal dependents residing in the debtor's household, or to persons, businesses, or other entities served by
 30 the debtor.

1 (4) A stay terminates upon:

2 (a) termination of the circumstances upon which a significant hardship is based;

3 (b) failure by the debtor to abide by the terms and conditions of a payment plan; or

4 (c) the date of termination, if any, provided in the order staying suspension of the license.

5 (5) If the licensing authority has been notified of an order suspending a license, the agency shall
6 send a copy of any order staying or reinstating suspension of the license to the licensing authority and the
7 debtor.

8 (6) (a) Upon receipt of an order staying or reinstating suspension of the license, the licensing
9 authority shall:

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11 (ii) report the action as appropriate; and

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