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SENATE BILL NO. 1035

Offered January 11, 2017

Prefiled January 4, 2017

A BILL to amend the Code of Virginia by adding in Title 6.2 a chapter numbered 26, consisting of sections numbered 6.2-2600 through 6.2-2610, and by adding in Chapter 2 of Title 23.1 an article numbered 4, consisting of sections numbered 23.1-230, 23.1-231, and 23.1-232, relating to student loans; licensing of student loan servicers; establishment of the Office of the Student Loan Ombudsman.

Patrons—Howell and McClellan

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 6.2 a chapter numbered 26, consisting of sections numbered 6.2-2600 through 6.2-2610, and by adding in Chapter 2 of Title 23.1 an article numbered 4, consisting of sections numbered 23.1-230, 23.1-231, and 23.1-232, as follows:

CHAPTER 26.

STUDENT LOAN SERVICERS.

§ 6.2-2600. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Servicing" means (i) receiving any scheduled periodic payments from a student loan borrower pursuant to the terms of a student education loan; (ii) applying the payments of principal and interest and such other payments, with respect to the amounts received from a student loan borrower, as may be required pursuant to the terms of a student education loan; and (iii) performing other administrative services with respect to a student education loan.

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

"Student loan borrower" means (i) any resident of the Commonwealth who has received or agreed to pay a student education loan or (ii) any person who shares responsibility with such resident for repaying the student education loan.

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

§ 6.2-2601. License required to act as student loan servicer.

A. No person shall act as a student loan servicer, directly or indirectly, without first obtaining a license from the Commission under § 6.2-2602, unless such person is exempt from licensure pursuant to subsection B.

B. The following persons are exempt from student loan servicer licensing requirements of this chapter:

1. Any bank or credit union; and

2. Any wholly owned subsidiary of any bank or credit union.

§ 6.2-2602. Licensing procedures; applications; renewals.

A. Any person seeking to act within the Commonwealth as a student loan servicer shall make a written application to the Commissioner for an initial license in such form as the Commissioner prescribes. Such application shall be accompanied by:

1. A financial statement prepared by a certified public accountant or a public accountant, the accuracy of which is sworn to under oath before a notary public by the proprietor, a general partner, or a corporate officer or a member duly authorized to execute such documents;

2. The history of criminal convictions of the applicant; partners, if the applicant is a partnership; members, if the applicant is a limited liability company or association; or officers, directors, and principal employees, if the applicant is a corporation, and sufficient information pertaining to the history of criminal convictions of such applicant, partners, members, officers, directors, or principal employees as the Commissioner deems necessary to make the findings under subsection C;

3. A nonrefundable license fee of \$1,000; and

4. A nonrefundable investigation fee of \$800.

B. In connection with an application for licensing as a student loan servicer, the applicant shall furnish to the Commission information concerning the applicant's identity, including fingerprints for submission to the Federal Bureau of Investigation or any federal or state governmental agency or entity authorized to receive such information for a state, national, and international criminal history records

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59 check, as prescribed by the Commission. The applicant shall also submit personal history and
60 experience in a form prescribed by the Commission, including submission of authorization for the
61 Commission to obtain (i) an independent credit report from a consumer reporting agency described in
62 § 603(p) of the Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.) and (ii) information related to any
63 administrative, civil, or criminal findings by any governmental jurisdiction.

64 C. Upon the filing of an application for an initial license and the payment of the fees for license and
65 investigation, the Commissioner shall investigate the financial condition and responsibility, financial and
66 business experience, character, and general fitness of the applicant. The Commissioner may issue a
67 license if the Commissioner finds that:

68 1. The applicant's financial condition is sound;

69 2. The applicant's business will be conducted honestly, fairly, equitably, carefully, and efficiently
70 within the purposes and intent of this chapter;

71 3. If the applicant is an individual, such individual is in all respects properly qualified and of good
72 character; if the applicant is a partnership, each partner is in all respects properly qualified and of
73 good character; if the applicant is a corporation or association, the president, chairman of the executive
74 committee, senior officer responsible for the corporation's business, and chief financial officer or any
75 other person who performs similar functions, as determined by the Commissioner, and each director,
76 each trustee, and each shareholder owning 10 percent or more of each class of the securities of such
77 corporation is in all respects properly qualified and of good character; or if the applicant is a limited
78 liability company, each member is in all respects properly qualified and of good character;

79 4. No person on behalf of the applicant knowingly has made any incorrect statement of a material
80 fact in the application or in any report or statement made pursuant to this chapter;

81 5. No person on behalf of the applicant knowingly has omitted to state any material fact necessary to
82 give the Commissioner any information lawfully required by the Commissioner;

83 6. The applicant has paid the investigation fee and the license fee required under subsection A; and

84 7. The applicant has met any other similar requirements as determined by the Commissioner.

85 D. A license issued pursuant to this section shall expire at the close of business on September 30 of
86 the second year following its issuance, unless renewed or earlier surrendered, suspended, or revoked
87 pursuant to this chapter. Not later than 15 days after a licensee ceases to engage in the business of
88 student loan servicing in the Commonwealth for any reason, including a business decision to terminate
89 operations in the Commonwealth, license revocation, bankruptcy, or voluntary dissolution, the licensee
90 shall provide written notice of surrender to the Commissioner and shall surrender to the Commissioner
91 its license for each location in which the licensee has ceased to engage in such business. The written
92 notice of surrender shall identify the location where the records of the licensee will be stored and the
93 name, address, and telephone number of an individual authorized to provide access to the records. The
94 surrender of a license does not reduce or eliminate the licensee's civil or criminal liability arising from
95 acts or omissions occurring prior to the surrender of the license, including any administrative actions
96 undertaken by the Commission to revoke or suspend a license, assess a civil penalty, order restitution,
97 or exercise any other authority provided to the Commission.

98 E. A license may be renewed for the ensuing 24-month period upon the filing of an application
99 containing all required documents and fees as provided in this section. Such renewal application shall
100 be filed on or before September 1 of the year in which the license expires. Any renewal application filed
101 with the Commissioner after September 1 shall be accompanied by a \$100 late fee, and any such filing
102 shall be deemed to be timely and sufficient. If an application for a renewal license has been filed with
103 the Commissioner on or before the date the license expires, the license sought to be renewed shall
104 continue in full force and effect until the issuance by the Commissioner of the renewal license applied
105 for or until the Commissioner has notified the licensee in writing of the Commissioner's refusal to issue
106 such renewal license together with the grounds upon which such refusal is based. The Commissioner
107 may refuse to issue a renewal license on any ground on which the Commission may refuse to issue an
108 initial license.

109 F. If the Commissioner determines that a check filed to pay a license or renewal fee has been
110 dishonored, the Commissioner shall automatically suspend the license or the renewal license that has
111 been issued but is not yet effective. The Commissioner shall give the licensee notice of the automatic
112 suspension pending proceedings for revocation or refusal to renew and an opportunity for a hearing on
113 such actions in accordance with the Commission's Rules.

114 G. The applicant or licensee shall notify the Commissioner in writing of any change in the
115 information provided in its initial application for a license or its most recent renewal application for
116 such license, as applicable, not later than 10 business days after the occurrence of the event that results
117 in such information becoming inaccurate.

118 H. The Commissioner may deem an application for a license abandoned if the applicant fails to
119 respond to any request for information required under this chapter. The Commissioner shall notify the
120 applicant, in writing, that if the applicant fails to submit such information not later than 60 days after

the date on which such request for information was made, the application shall be deemed abandoned. An application filing fee paid prior to the date an application is deemed abandoned pursuant to this subsection shall not be refunded. Abandonment of an application pursuant to this subsection shall not preclude the applicant from submitting a new application for a license under the provisions of this chapter.

§ 6.2-2603. Place of business.

No person licensed to act within the Commonwealth as a student loan servicer shall do so under any name or at any other place of business other than that named in the license. Any change of location of a place of business of a licensee shall require prior written notice to the Commissioner. Not more than one place of business shall be maintained under the same license, but the Commissioner may issue more than one license to the same licensee upon compliance with the provisions of this chapter as to each new licensee. A license shall not be transferable or assignable.

§ 6.2-2604. Records.

A. Each student loan servicer licensee and persons exempt from licensure pursuant to subsection B of § 6.2-2601 shall maintain adequate records of each student education loan transaction for not less than two years following the final payment on such student education loan or the assignment of such student education loan, whichever occurs first, or such longer period as may be required by any other provision of law.

B. If requested by the Commissioner, each student loan servicer shall make such records available or send such records to the Commissioner by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt, not later than five business days after requested by the Commissioner to do so. Upon request, the Commissioner may grant a licensee additional time to make such records available or send the records to the Commissioner.

§ 6.2-2605. Prohibited activities.

No student loan servicer shall:

1. Directly or indirectly employ any scheme, device, or artifice to defraud or mislead student loan borrowers;

2. Engage in any unfair or deceptive practice toward any person or misrepresent or omit any material information in connection with the servicing of a student loan, including misrepresenting the amount, nature, or terms of any fee or payment due or claimed to be due on a student loan, the terms and conditions of the loan agreement, or the borrower's obligations under the loan;

3. Obtain property by fraud or misrepresentation;

4. Knowingly misapply or recklessly apply student loan payments to the outstanding balance of a student loan;

5. Knowingly or recklessly provide inaccurate information to a nationally recognized consumer credit bureau, thereby harming a borrower's creditworthiness;

6. Fail to report both the favorable and unfavorable payment history of the borrower to a nationally recognized consumer credit bureau at least annually if the loan servicer regularly reports information to such a credit bureau;

7. Refuse to communicate with an authorized representative of the borrower who provides a written authorization signed by the borrower, provided that the loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the borrower; or

8. Negligently make any false statement or knowingly and willfully make any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the Commission or another governmental agency.

§ 6.2-2606. Investigations; examinations.

A. The Commission may, as often as it deems necessary, investigate and examine the affairs, business, premises, and records of any loan servicer required to be licensed under this chapter insofar as they pertain to any business for which a license is required by this chapter. Examinations of such loan servicers shall be conducted at least once in each three-year period. In the course of such investigations and examinations, the owners, members, officers, directors, partners, and employees of the loan servicer being investigated or examined shall, upon demand of the person making such investigation or examination, afford full access to all premises, books, records, and information that the person making such investigation or examination deems necessary. For the foregoing purposes, the person making such investigation or examination shall have authority to administer oaths, examine under oath all the aforementioned persons, and compel the production of papers and objects of all kinds.

B. For the purposes of investigating violations or complaints arising under this chapter or for the purposes of examination, the Commissioner may review, investigate, or examine any student loan servicer licensee or person subject to the requirements of this chapter as often as necessary in order to carry out the purposes of this chapter. The Commissioner may direct, subpoena, or order the attendance

182 of and examine under oath all persons whose testimony may be required about the student education
183 loan or the business or subject matter of any such examination or investigation and may direct,
184 subpoena, or order such person to produce books, accounts, records, files, and any other documents the
185 Commissioner deems relevant to the inquiry.

186 C. In order to carry out the purposes of this section, the Commissioner may:

187 1. Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or
188 investigators to conduct or assist in the conduct of examinations or investigations;

189 2. Enter into agreements or relationships with other government officials or regulatory associations
190 in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or
191 uniform methods or procedures, and documents, records, information, or evidence obtained under this
192 section;

193 3. Use, hire, contract, or employ public or privately available analytical systems, methods, or
194 software to examine or investigate the student loan servicer licensee or person subject to this chapter;

195 4. Accept and rely on examination or investigation reports made by other government officials,
196 within or without the Commonwealth; and

197 5. Accept audit reports made by an independent certified public accountant for the student loan
198 servicer licensee or person subject to this chapter in the course of that part of the examination covering
199 the same general subject matter as the audit and may incorporate the audit report in the report of
200 examination, report of investigation, or other writing of the Commissioner.

201 D. The authority of this section shall remain in effect, whether such student loan servicer licensee or
202 person subject to this chapter acts or claims to act under any licensing or registration law of the
203 Commonwealth or claims to act without such authority.

204 E. No student loan servicer licensee or person subject to investigation or examination under this
205 section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records,
206 computer records, or other information.

207 **§ 6.2-2607. Suspension, revocation, or refusal to renew license.**

208 A. The Commission may suspend, revoke, or refuse to renew any license issued under the provisions
209 of this chapter if the Commission finds:

210 1. Any ground for denial of a license under this chapter;

211 2. Any violation of the provisions of this chapter or regulations adopted by the Commission pursuant
212 thereto or a violation of any other law or regulation applicable to the conduct of the student loan
213 servicer's business;

214 3. A course of conduct consisting of the failure to perform written agreements with student loan
215 borrowers;

216 4. Failure to account for funds received or disbursed to the satisfaction of the person supplying or
217 receiving student loan funds;

218 5. Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit;

219 6. Entry of a judgment against the licensee involving fraud, misrepresentation, or deceit;

220 7. Entry of a federal or state administrative order against the student loan servicer for violation of
221 any law or any regulation applicable to the conduct of the student loan servicer's business;

222 8. Refusal to permit an investigation or examination by the Commission;

223 9. Failure to pay any fee or assessment imposed by this chapter; or

224 10. Failure to comply with any order of the Commission.

225 B. For the purposes of this section, acts of any officer, director, member, partner, or principal shall
226 be deemed acts of the student loan servicer.

227 C. No abatement of the license fee shall be made if a license issued under this chapter is
228 surrendered, revoked, or suspended prior to the expiration of the period for which it was issued.

229 **§ 6.2-2608. Cease and desist orders.**

230 A. If the Commission determines that any student loan servicer required to be licensed under this
231 chapter has violated any provision of this chapter or any regulation adopted pursuant thereto, the
232 Commission may, upon 21 days' notice in writing, order such person to cease and desist from such
233 practices and to comply with the provisions of this chapter. The notice shall be sent by certified mail to
234 the principal place of business of the student loan servicer and shall state the grounds for the
235 contemplated action.

236 B. Within 14 days of mailing the notice, the person named therein may file with the clerk of the
237 Commission a written request for a hearing. If a hearing is requested, the Commission shall not issue a
238 cease and desist order except based upon findings made at the hearing. The hearing shall be conducted
239 in accordance with the provisions of Title 12.1. The Commission may enforce compliance with any such
240 order issued under this section by imposition and collection of such fines and penalties as may be
241 prescribed by Commission regulations.

242 **§ 6.2-2609. Compliance with federal laws.**

243 A student loan servicer shall comply with all applicable federal laws and regulations relating to

student loan servicing, including, but not limited to, the Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., as amended, and regulations promulgated thereunder. In addition to any other remedies provided by law, a violation of any such federal law or regulation shall be deemed a violation of this chapter and a basis upon which the Commissioner may take enforcement action pursuant to § 6.2-2607 or 6.2-2608.

§ 6.2-2610. Regulations.

The Commission shall adopt such regulations as it deems appropriate to effect the purposes of this chapter. Before adopting any such regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to present evidence and be heard, in accordance with the Commission's Rules.

Article 4.

Office of the Student Loan Ombudsman.

§ 23.1-230. Office of the Student Loan Ombudsman established; duties.

A. The Council shall create the Office of the Student Loan Ombudsman. The Office of the Student Loan Ombudsman shall provide timely assistance to any student loan borrower, as defined in § 6.2-2600, of any student education loan, as defined in § 6.2-2600, in the Commonwealth. All state agencies shall assist and cooperate with the Office of the Student Loan Ombudsman in the performance of its duties under this article.

B. The Office of the Student Loan Ombudsman shall:

1. Receive, review, and attempt to resolve any complaints from student loan borrowers, including attempts to resolve such complaints in collaboration with institutions of higher education, student loan servicers, as defined in § 6.2-2600, and any other participants in student loan lending;

2. Compile and analyze data on student loan borrower complaints as described in subdivision 1;

3. Assist student loan borrowers to understand their rights and responsibilities under the terms of student education loans;

4. Provide information to the public, state agencies, legislators, and other persons regarding the problems and concerns of student loan borrowers and make recommendations for resolving those problems and concerns;

5. Analyze and monitor the development and implementation of federal and state laws and policies relating to student loan borrowers and recommend any changes the Office of the Student Loan Ombudsman deems necessary;

6. Review the complete student education loan history of any student loan borrower who has provided written consent for such review;

7. Disseminate information concerning the availability of the Office of the Student Loan Ombudsman to assist student loan borrowers and potential student loan borrowers, as well as public institutions of higher education, student loan servicers, and any other participant in student education loan lending, with any student loan servicing concerns; and

8. Take any other actions necessary to fulfill the duties of the Office of the Student Loan Ombudsman as set forth in this section.

§ 23.1-231. Student loan borrower education course.

On or before October 1, 2018, the Office of the Student Loan Ombudsman shall establish and maintain a student loan borrower education course that shall include educational presentations and materials regarding student education loans. Topics covered by the program shall include key loan terms, documentation requirements, monthly payment obligations, income-based repayment options, loan forgiveness, and disclosure requirements.

§ 23.1-232. Reports.

On or before January 1, 2018, and annually thereafter, the Council shall submit a report to the House Committees on Commerce and Labor and Education and the Senate Committees on Commerce and Labor and Education and Health. The report shall address (i) the implementation of this article and (ii) the overall effectiveness of the Office of the Student Loan Ombudsman.

2. That the provisions of this act shall become effective on October 1, 2017.