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SENATE BILL NO. 362

Offered January 10, 2018

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A BILL to amend and reenact § 19.2-389 of the Code of Virginia and to amend the Code of Virginia by adding in Title 6.2 a chapter numbered 26, consisting of sections numbered 6.2-2600 through 6.2-2617, relating to qualified education loans; licensing of qualified education loan servicers; civil penalties.

Patrons—Howell and Wexton

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-389 of the Code of Virginia is amended and reenacted and 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 6.2-2617, as follows:

CHAPTER 26.

QUALIFIED EDUCATION LOAN SERVICERS.

§ 6.2-2600. Definitions.

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

"Licensee" means a qualified education loan servicer licensed under this chapter.

"Nationwide Mortgage Licensing System and Registry" or "Registry" means the mortgage licensing and registration system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

"Principal" means any person who, directly or indirectly, owns or controls (i) 10 percent or more of the outstanding stock of a stock corporation or (ii) a 10 percent or greater interest in any other type of entity.

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

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

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

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

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

A. No person shall act as a qualified education 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 qualified education loan servicer licensing requirements and all other provisions of this chapter:

1. Any bank or credit union; and
2. Any public or private nonprofit institution of higher education.

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

A. Any person seeking to act as a qualified education loan servicer shall make a written application to the Commission 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;

59 3. A nonrefundable license fee in an amount prescribed by the Commission by rule or order; and

60 4. A nonrefundable investigation fee in an amount prescribed by the Commission by rule or order.

61 The license fee and the investigation fee shall be set by the Commission at a reasonable amount
62 based on the actual costs incurred by the Commission.

63 B. In connection with an application for licensing as a qualified education loan servicer, the
64 applicant shall furnish to the Commission information concerning the applicant's identity, including
65 fingerprints for submission to the Federal Bureau of Investigation or any federal or state governmental
66 agency or entity authorized to receive such information for a state, national, and international criminal
67 history records check, as prescribed by the Commission. The applicant shall also submit personal
68 history and experience in a form prescribed by the Commission, including submission of authorization
69 for the Commission to obtain (i) an independent credit report from a consumer reporting agency
70 described in § 603(p) of the Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.) and (ii) information
71 related to any administrative, civil, or criminal findings by any governmental jurisdiction.

72 C. Upon the filing of an application for an initial license and the payment of the fees for license and
73 investigation, the Commissioner shall make such investigations as he deems necessary to determine if
74 the applicant has complied with all applicable provisions of law and regulations. The Commission shall
75 issue a license if it finds that:

76 1. The financial responsibility, character, reputation, experience, and general fitness of the applicant
77 and its members, senior officers, directors, and principals are such as to warrant belief that the business
78 will be operated efficiently and fairly, in the public interest, and in accordance with the law;

79 2. If the applicant is an individual, such individual is in all respects properly qualified and of good
80 character; if the applicant is a partnership, each partner is in all respects properly qualified and of
81 good character; if the applicant is a corporation or association, the president, chairman of the executive
82 committee, senior officer responsible for the corporation's business, and chief financial officer or any
83 other person who performs similar functions, as determined by the Commissioner, and each director,
84 each trustee, and each shareholder owning 10 percent or more of each class of the securities of such
85 corporation is in all respects properly qualified and of good character; or if the applicant is a limited
86 liability company, each member is in all respects properly qualified and of good character;

87 3. No person on behalf of the applicant has made any incorrect statement of a material fact in the
88 application or in any report or statement made pursuant to this chapter;

89 4. No person on behalf of the applicant has omitted to state any material fact necessary to give the
90 Commissioner any information lawfully required by the Commissioner;

91 5. The applicant has paid the investigation fee and the license fee required under subsection A; and

92 6. The applicant has met any other requirements under this chapter as determined by the
93 Commissioner.

94 D. If the Commissioner fails to make such findings, no license shall be issued and the Commissioner
95 shall notify the applicant of the denial and the reasons for such denial.

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

109 F. A license may be renewed for the ensuing 24-month period upon the filing of an application
110 containing all required documents and fees as provided in this section. Such renewal application shall
111 be filed on or before September 1 of the year in which the license expires. Any renewal application filed
112 with the Commissioner after September 1 shall be accompanied by a \$100 late fee, and any such filing
113 shall be deemed to be timely and sufficient. If an application for a renewal license has been filed with
114 the Commissioner on or before the date the license expires, the license sought to be renewed shall
115 continue in full force and effect until the issuance by the Commissioner of the renewal license applied
116 for or until the Commissioner has notified the licensee in writing of the Commissioner's refusal to issue
117 such renewal license together with the grounds upon which such refusal is based. The Commissioner
118 may refuse to issue a renewal license on any ground on which the Commission may refuse to issue an
119 initial license.

120 G. If the Commissioner determines that a check filed to pay a license or renewal fee has been

121 *dishonored, the Commissioner shall automatically suspend the license or the renewal license that has*
 122 *been issued but is not yet effective. The Commissioner shall give the licensee notice of the automatic*
 123 *suspension pending proceedings for revocation or refusal to renew and an opportunity for a hearing on*
 124 *such actions in accordance with the Commission's Rules.*

125 *H. The applicant or licensee shall notify the Commissioner in writing of any change in the*
 126 *information provided in its initial application for a license or its most recent renewal application for*
 127 *such license, as applicable, not later than 10 business days after the occurrence of the event that results*
 128 *in such information becoming inaccurate.*

129 *I. The Commissioner may deem an application for a license abandoned if the applicant fails to*
 130 *respond to any request for information required under this chapter. The Commissioner shall notify the*
 131 *applicant, in writing, that if the applicant fails to submit such information not later than 60 days after*
 132 *the date on which such request for information was made, the application shall be deemed abandoned.*
 133 *An application filing fee paid prior to the date on which an application is deemed abandoned pursuant*
 134 *to this subsection shall not be refunded. Abandonment of an application pursuant to this subsection*
 135 *shall not preclude the applicant from submitting a new application for a license under the provisions of*
 136 *this chapter.*

137 **§ 6.2-2603. Bond required.**

138 *The application for a license shall also be accompanied by a bond filed with the Commissioner with*
 139 *corporate surety authorized to execute such bond in the Commonwealth, in the sum of \$50,000 per*
 140 *location, not to exceed a total of \$500,000. The form of such bond shall be approved by the*
 141 *Commission. Such bond shall be continuously maintained thereafter in full force. Such bond shall be*
 142 *conditioned upon the applicant or licensee performing all written agreements with borrowers or*
 143 *prospective borrowers, correctly and accurately accounting for all funds received by him in his licensed*
 144 *business, and conducting its licensed business in conformity with this chapter and all applicable laws.*
 145 *Any person who may be damaged by noncompliance of the licensee with any condition of such bond*
 146 *may proceed on such bond against the principal or surety thereon, or both, to recover damages. The*
 147 *aggregate liability under the bond shall not exceed the penal sum of the bond.*

148 **§ 6.2-2604. Place of business.**

149 *No person licensed as a qualified education loan servicer shall service qualified education loans*
 150 *under any other name or at any other place of business than that named in the license. Any change of*
 151 *location of a place of business of a licensee shall require prior written notice to the Commissioner. Not*
 152 *more than one place of business shall be maintained under the same license, but the Commissioner may*
 153 *issue more than one license to the same licensee upon compliance with the provisions of this chapter as*
 154 *to each new license. No licensee shall open an additional office without prior approval of the*
 155 *Commissioner. Applications for such approval shall be made in writing on a form provided by the*
 156 *Commissioner and shall be accompanied by payment of a \$150 nonrefundable application fee. The*
 157 *application shall be approved unless the Commissioner finds that the applicant has not conducted*
 158 *business under this chapter efficiently, fairly, in the public interest, and in accordance with law. The*
 159 *application for approval shall be deemed approved if notice to the contrary has not been mailed by the*
 160 *Commissioner to the applicant within 30 days of the date the application is received by the*
 161 *Commissioner. A license shall not be transferable or assignable.*

162 **§ 6.2-2605. Records.**

163 *A. Each licensee shall maintain adequate records of each qualified education loan transaction for*
 164 *not less than three years following the final payment on such qualified education loan or the assignment*
 165 *of such qualified education loan, whichever occurs first, or such longer period as may be required by*
 166 *any other provision of law.*

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

172 **§ 6.2-2606. Acquisition of control; application.**

173 *A. Except as provided in this section, no person shall acquire, directly or indirectly, 25 percent or*
 174 *more of the voting shares of a corporation or 25 percent or more of the ownership of any other person*
 175 *licensed to conduct business under this chapter unless such person first:*

176 *1. Files an application with the Commission in such form as the Commissioner may prescribe from*
 177 *time to time;*

178 *2. Delivers such other information to the Commissioner as the Commissioner may require concerning*
 179 *the financial responsibility, background, experience, and activities of the applicant, of its directors,*
 180 *senior officers, principals, and members, and of any proposed new directors, senior officers, principals,*
 181 *or members of the licensee;*

182 3. Submits and furnishes to the Commissioner information concerning the identity of the applicant
 183 and of any proposed new director, senior officers, principals, trustee, or members of the licensee. Such
 184 individuals shall (i) consent to a criminal history records check, submit to fingerprinting, and pay for
 185 the cost of such fingerprinting and criminal records check and (ii) cause their fingerprints, personal
 186 descriptive information, and records check fees to be submitted to either of the following as prescribed
 187 by the Commission:

188 a. The Commissioner, who shall forward these items to the Central Criminal Records Exchange. The
 189 Central Criminal Records Exchange shall (i) conduct a search of its own criminal history records and
 190 forward such individual's fingerprints and personal descriptive information to the Federal Bureau of
 191 Investigation for the purpose of obtaining national criminal history record information regarding such
 192 individual and (ii) forward the results of the state and national records search to the Commissioner or
 193 his designee, who shall be an employee of the Commission; or

194 b. The Registry, provided that it is capable of processing criminal history records checks; and

195 4. Pays such application fee as the Commission may prescribe.

196 B. Upon the filing and investigation of an application, the Commission shall permit the applicant to
 197 acquire the interest in the licensee if it finds that the applicant, its members if applicable, and its
 198 directors, senior officers, trustees, and principals and any proposed new directors, members, senior
 199 officers, trustees, and principals have the financial responsibility, character, reputation, experience, and
 200 general fitness to warrant belief that the business will be operated efficiently and fairly, in the public
 201 interest, and in accordance with law. The Commission shall grant or deny the application within 60
 202 days from the date a completed application accompanied by the required fee is filed unless the period is
 203 extended by order of the Commissioner reciting the reasons for the extension. If the application is
 204 denied, the Commission shall notify the applicant of the denial and the reasons for the denial.

205 C. The provisions of this section shall not apply to the acquisition of an interest in a licensee (i)
 206 directly or indirectly, including an acquisition by merger or consolidation by or with a person licensed
 207 under this chapter; (ii) directly or indirectly, by merger or consolidation by or with a person affiliated
 208 through common ownership with the licensee; or (iii) by bequest, descent, survivorship, or operation of
 209 law. The person acquiring an interest in a licensee in a transaction that is exempt from filing an
 210 application by this subsection shall send written notice to the Commissioner of such acquisition within
 211 30 days of its closing.

212 **§ 6.2-2607. Prohibited activities.**

213 No qualified education loan servicer shall:

214 1. Directly or indirectly employ any scheme, device, or artifice to defraud or mislead qualified
 215 education loan borrowers;

216 2. Engage in any unfair or deceptive practice toward any person or misrepresent or omit any
 217 material information in connection with the servicing of a qualified education loan, including
 218 misrepresenting (i) the amount, nature, or terms of any fee or payment due or claimed to be due on a
 219 qualified education loan; (ii) the terms and conditions of the loan agreement; or (iii) the borrower's
 220 obligations under the loan;

221 3. Obtain property by fraud or misrepresentation;

222 4. Misapply qualified education loan payments to the outstanding balance of a qualified education
 223 loan;

224 5. Provide inaccurate information to a nationally recognized consumer credit bureau, thereby
 225 harming a borrower's creditworthiness;

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

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

232 8. Make any false statement or omit any material fact in connection with any information or reports
 233 filed with a governmental agency or in connection with any investigation conducted by the Commission
 234 or another governmental agency; or

235 9. Engage in any other prohibited activities identified in the regulations adopted by the Commission
 236 pursuant to this chapter.

237 B. A qualified education loan servicer shall comply with all federal laws and regulations applicable
 238 to the conduct of its license business. In addition to any other remedies proved by law, a violation of
 239 any such federal law or regulation shall be deemed a violation of this chapter and a basis upon which
 240 the Commission may take enforcement action pursuant to § 6.2-2611, 6.2-2613, or 6.2-2615.

241 **§ 6.2-2608. Other reporting requirements.**

242 A. Within 15 days following the occurrence of any of the following events, a licensee shall file a
 243 written report with the Commission describing such event and its expected impact upon the business of

244 the licensee:

- 245 1. The filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee;
 246 2. The institution of administrative or regulatory proceedings against the licensee by any
 247 governmental authority;
 248 3. Any felony indictment of the licensee or any of its members, partners, directors, officers, or
 249 principals;
 250 4. Any felony conviction of the licensee or any of its members, partners, directors, officers, or
 251 principals; and
 252 5. Such other event as the Commission may prescribe by regulation.

253 B. Each licensee shall file periodic written reports with the Commissioner or the Registry containing
 254 such information as the Commissioner may require concerning the licensee's business and operations.
 255 Reports shall be in the form and be submitted with such frequency and by such dates as may be
 256 prescribed by the Commissioner.

257 **§ 6.2-2609. Investigations; examinations.**

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

269 B. For the purposes of investigating violations or complaints arising under this chapter or for the
 270 purposes of examination, the Commissioner may review, investigate, or examine any qualified education
 271 loan servicer licensee or person subject to the requirements of this chapter as often as necessary in
 272 order to carry out the purposes of this chapter. The Commissioner may direct, subpoena, or order the
 273 attendance of and examine under oath all persons whose testimony may be required about the qualified
 274 education loan or the business or subject matter of any such examination or investigation and may
 275 direct, subpoena, or order such person to produce books, accounts, records, files, and any other
 276 documents the Commissioner deems relevant to the inquiry.

277 C. In order to carry out the purposes of this chapter, the Commissioner may:

- 278 1. Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or
 279 investigators to conduct or assist in the conduct of examinations or investigations;
 280 2. Enter into agreements or relationships with other government officials or regulatory associations
 281 in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or
 282 uniform methods or procedures, and documents, records, information, or evidence obtained under this
 283 section;
 284 3. Use, hire, contract, or employ public or privately available analytical systems, methods, or
 285 software to examine or investigate the qualified education loan servicer licensee or person subject to
 286 this chapter;
 287 4. Accept and rely on examination or investigation reports made by other government officials,
 288 within or without the Commonwealth; and

289 5. Accept audit reports made by an independent certified public accountant for the qualified
 290 education loan servicer licensee or person subject to this chapter in the course of that part of the
 291 examination covering the same general subject matter as the audit and may incorporate the audit report
 292 in the report of examination, report of investigation, or other writing of the Commissioner.

293 D. The authority of this section shall remain in effect, whether such qualified education loan servicer
 294 licensee or person subject to this chapter acts or claims to act under any licensing or registration law
 295 of the Commonwealth or claims to act without such authority.

296 E. No qualified education loan servicer licensee or person subject to investigation or examination
 297 under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books,
 298 records, computer records, or other information.

299 **§ 6.2-2610. Annual fees.**

300 A. In order to defray the costs of its examination, supervision, and regulation, every licensee under
 301 this chapter shall pay an annual fee calculated in accordance with a schedule set by the Commission.
 302 The schedule shall bear a reasonable relationship to the business volume of such licensees, the actual
 303 costs of their examinations, and other factors relating to their supervision and regulation. All such fees
 304 shall be assessed on or before September 15 for every calendar year. All such fees shall be paid by the

305 licensee to the State Treasurer on or before October 15 following each assessment.

306 B. In addition to the annual fee prescribed in subsection A, when it becomes necessary to examine or
 307 investigate the books and records of a licensee under this chapter at a location outside the
 308 Commonwealth, the licensee shall be liable for and shall pay to the Commission within 30 days of the
 309 presentation of an itemized statement the actual travel and reasonable living expenses incurred on
 310 account of its examination, supervision, and regulation or shall pay a reasonable per diem rate
 311 approved by the Commission.

312 **§ 6.2-2611. Suspension, revocation, or refusal to renew license.**

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

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

316 2. Any violation of the provisions of this chapter or regulations adopted by the Commission pursuant
 317 thereto or a violation of any other law or regulation applicable to the conduct of the licensee's
 318 business;

319 3. A course of conduct consisting of the failure to perform written agreements with qualified
 320 education loan borrowers;

321 4. Failure to account for funds received or disbursed to the satisfaction of the person supplying or
 322 receiving qualified education loan funds;

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

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

325 7. Entry of a federal or state administrative order against the qualified education loan servicer for
 326 violation of any law or any regulation applicable to the conduct of the licensee's business;

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

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

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

330 B. For the purposes of this section, acts of any officer, director, member, partner, or principal shall
 331 be deemed acts of the qualified education loan servicer.

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

334 **§ 6.2-2612. Notice of proposed suspension or revocation.**

335 The Commission shall not revoke or suspend the license of any licensee upon any of the grounds set
 336 forth in § 6.2-2611 until it has given the qualified education loan servicer (i) 21 days' notice in writing
 337 of the reasons for the proposed revocation or suspension and (ii) an opportunity to introduce evidence
 338 and be heard. The notice shall be sent by certified mail to the principal place of business of such
 339 licensee and shall state with particularity the grounds for the contemplated action. Within 14 days of
 340 mailing the notice, the licensee named therein may file with the clerk of the Commission a written
 341 request for a hearing. If a hearing is requested, the Commission shall not suspend or revoke the license
 342 except on the basis of findings made at such hearing. The hearing shall be conducted in accordance
 343 with the provisions of Title 12.1.

344 **§ 6.2-2613. Cease and desist orders.**

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

351 B. Within 14 days of mailing the notice, the person named therein may file with the clerk of the
 352 Commission a written request for a hearing. If a hearing is requested, the Commission shall not issue a
 353 cease and desist order except on the basis of findings made at the hearing. The hearing shall be
 354 conducted in accordance with the provisions of Title 12.1. The Commission may enforce compliance
 355 with any such order issued under this section by imposition and collection of such fines and penalties as
 356 may be prescribed by Commission regulations.

357 **§ 6.2-2614. Compliance with federal laws.**

358 A qualified education loan servicer shall comply with all applicable federal laws and regulations
 359 relating to qualified education loan servicing, including, but not limited to, the Truth in Lending Act, 15
 360 U.S.C. § 1601 et seq., as amended, and regulations promulgated thereunder. In addition to any other
 361 remedies provided by law, a violation of any such federal law or regulation shall be deemed a violation
 362 of this chapter and a basis upon which the Commissioner may take enforcement action pursuant to §
 363 6.2-2611, 6.2-2613, or 6.2-2615.

364 **§ 6.2-2615. Civil penalties.**

365 The Commission may impose a civil penalty not exceeding \$2,500 upon any person required to be
 366 licensed under this chapter who the Commission determines, in proceedings commenced in accordance

367 with the Commission's Rules, has violated any of the provisions of this chapter or any other law or
 368 regulation applicable to the licensee's activities. For the purposes of this section, each separate violation
 369 shall be subject to the civil penalty herein prescribed, and each day that an unlicensed person engages
 370 in the business of a qualified education loan servicer shall constitute a separate violation.

371 **§ 6.2-2616. Nationwide Mortgage Licensing System and Registry.**

372 A. Any person required to be licensed as a qualified education loan servicer pursuant to this chapter
 373 shall also be required to register with the Nationwide Mortgage Licensing System and Registry as a
 374 condition for obtaining a license. Such person shall be subject to such registration and renewal
 375 requirements as may be established by the Registry, in addition to the requirements of this chapter.
 376 Regulations adopted by the Commission pursuant to § 6.2-2617 shall include any terms, conditions, or
 377 requirements applicable to such registration and renewal. Any fees required by the Registry shall be
 378 separate and apart from any fees imposed by this chapter.

379 B. The Commission may include in its regulations adopted pursuant to § 6.2-2617 authorization for
 380 the Registry to collect any fees imposed by this chapter and to remit such fees to the Commission.

381 **§ 6.2-2617. Regulations.**

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

386 **§ 19.2-389. Dissemination of criminal history record information.**

387 A. Criminal history record information shall be disseminated, whether directly or through an
 388 intermediary, only to:

389 1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for
 390 purposes of the administration of criminal justice and the screening of an employment application or
 391 review of employment by a criminal justice agency with respect to its own employees or applicants, and
 392 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all
 393 state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,
 394 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For
 395 purposes of this subdivision, criminal history record information includes information sent to the Central
 396 Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time
 397 or part-time employee of the State Police, a police department or sheriff's office that is a part of or
 398 administered by the Commonwealth or any political subdivision thereof, and who is responsible for the
 399 prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the
 400 Commonwealth for the purposes of the administration of criminal justice;

401 2. Such other individuals and agencies that require criminal history record information to implement
 402 a state or federal statute or executive order of the President of the United States or Governor that
 403 expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such
 404 conduct, except that information concerning the arrest of an individual may not be disseminated to a
 405 noncriminal justice agency or individual if an interval of one year has elapsed from the date of the
 406 arrest and no disposition of the charge has been recorded and no active prosecution of the charge is
 407 pending;

408 3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide
 409 services required for the administration of criminal justice pursuant to that agreement which shall
 410 specifically authorize access to data, limit the use of data to purposes for which given, and ensure the
 411 security and confidentiality of the data;

412 4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities
 413 pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data,
 414 limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and
 415 security of the data;

416 5. Agencies of state or federal government that are authorized by state or federal statute or executive
 417 order of the President of the United States or Governor to conduct investigations determining
 418 employment suitability or eligibility for security clearances allowing access to classified information;

419 6. Individuals and agencies where authorized by court order or court rule;

420 7. Agencies of any political subdivision of the Commonwealth, public transportation companies
 421 owned, operated or controlled by any political subdivision, and any public service corporation that
 422 operates a public transit system owned by a local government for the conduct of investigations of
 423 applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is
 424 necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a
 425 conviction record would be compatible with the nature of the employment, permit, or license under
 426 consideration;

427 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of

428 Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a
429 position of employment whenever, in the interest of public welfare or safety and as authorized in the
430 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person
431 with a conviction record would be compatible with the nature of the employment under consideration;

432 8. Public or private agencies when authorized or required by federal or state law or interstate
433 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the
434 adult members of that individual's household, with whom the agency is considering placing a child or
435 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,
436 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that
437 the data shall not be further disseminated to any party other than a federal or state authority or court as
438 may be required to comply with an express requirement of law;

439 9. To the extent permitted by federal law or regulation, public service companies as defined in
440 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
441 personal contact with the public or when past criminal conduct of an applicant would be incompatible
442 with the nature of the employment under consideration;

443 10. The appropriate authority for purposes of granting citizenship and for purposes of international
444 travel, including, but not limited to, issuing visas and passports;

445 11. A person requesting a copy of his own criminal history record information as defined in
446 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
447 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
448 America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any
449 affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board
450 member or any individual who has been offered membership on the board of a Crime Stoppers, Crime
451 Solvers or Crime Line program as defined in § 15.2-1713.1;

452 12. Administrators and board presidents of and applicants for licensure or registration as a child
453 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'
454 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and
455 volunteers at such facilities, caretakers, and other adults living in family day homes or homes approved
456 by family day systems, and foster and adoptive parent applicants of private child-placing agencies,
457 pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1, subject to the restriction
458 that the data shall not be further disseminated by the facility or agency to any party other than the data
459 subject, the Commissioner of Social Services' representative or a federal or state authority or court as
460 may be required to comply with an express requirement of law for such further dissemination;

461 13. The school boards of the Commonwealth for the purpose of screening individuals who are
462 offered or who accept public school employment and those current school board employees for whom a
463 report of arrest has been made pursuant to § 19.2-83.1;

464 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law
465 (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of
466 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

467 15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations
468 of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital
469 pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject
470 to the limitations set out in subsection E;

471 16. Licensed assisted living facilities and licensed adult day care centers for the conduct of
472 investigations of applicants for compensated employment in licensed assisted living facilities and
473 licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

474 17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth
475 in § 4.1-103.1;

476 18. The State Board of Elections and authorized officers and employees thereof and general registrars
477 appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to
478 voter registration, limited to any record of felony convictions;

479 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who
480 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,
481 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

482 20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety
483 Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first
484 offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

485 21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the
486 Department of Education, or the Department of Behavioral Health and Developmental Services for the
487 purpose of determining applicants' fitness for employment or for providing volunteer or contractual
488 services;

489 22. The Department of Behavioral Health and Developmental Services and facilities operated by the

490 Department for the purpose of determining an individual's fitness for employment pursuant to
491 departmental instructions;

492 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or
493 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such
494 records information on behalf of such governing boards or administrators pursuant to a written
495 agreement with the Department of State Police;

496 24. Public institutions of higher education and nonprofit private institutions of higher education for
497 the purpose of screening individuals who are offered or accept employment;

498 25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4,
499 by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of
500 higher education, for the purpose of assessing or intervening with an individual whose behavior may
501 present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal
502 history record information obtained pursuant to this section or otherwise use any record of an individual
503 beyond the purpose that such disclosure was made to the threat assessment team;

504 26. Executive directors of community services boards or the personnel director serving the
505 community services board for the purpose of determining an individual's fitness for employment,
506 approval as a sponsored residential service provider, or permission to enter into a shared living
507 arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to
508 §§ 37.2-506 and 37.2-607;

509 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of
510 determining an individual's fitness for employment, approval as a sponsored residential service provider,
511 or permission to enter into a shared living arrangement with a person receiving medical assistance
512 services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

513 28. The Commissioner of Social Services for the purpose of locating persons who owe child support
514 or who are alleged in a pending paternity proceeding to be a putative father, provided that only the
515 name, address, demographics and social security number of the data subject shall be released;

516 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of
517 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the
518 purpose of determining if any applicant who accepts employment in any direct care position or requests
519 approval as a sponsored residential service provider or permission to enter into a shared living
520 arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted
521 of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with
522 mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and
523 37.2-607;

524 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants
525 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20
526 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

527 31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates
528 for the purpose of determining if any person being considered for election to any judgeship has been
529 convicted of a crime;

530 32. Heads of state agencies in which positions have been identified as sensitive for the purpose of
531 determining an individual's fitness for employment in positions designated as sensitive under Department
532 of Human Resource Management policies developed pursuant to § 2.2-1201.1;

533 33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under
534 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually
535 Violent Predators Act (§ 37.2-900 et seq.);

536 34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design,
537 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary
538 companies, for the conduct of investigations of applications for employment or for access to facilities,
539 by contractors, leased laborers, and other visitors;

540 35. Any employer of individuals whose employment requires that they enter the homes of others, for
541 the purpose of screening individuals who apply for, are offered, or have accepted such employment;

542 36. Public agencies when and as required by federal or state law to investigate (i) applicants as
543 providers of adult foster care and home-based services or (ii) any individual with whom the agency is
544 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,
545 subject to the restriction that the data shall not be further disseminated by the agency to any party other
546 than a federal or state authority or court as may be required to comply with an express requirement of
547 law for such further dissemination, subject to limitations set out in subsection G;

548 37. The Department of Medical Assistance Services, or its designee, for the purpose of screening
549 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,
550 or have accepted a position related to the provision of transportation services to enrollees in the

551 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other
552 program administered by the Department of Medical Assistance Services;

553 38. The State Corporation Commission for the purpose of investigating individuals who are current
554 or proposed members, senior officers, directors, and principals of an applicant or person licensed under
555 Chapter 16 (§ 6.2-1600 et seq.) ~~or Chapter~~, 19 (§ 6.2-1900 et seq.), *or 26 (§ 6.2-2600 et seq.)* of Title
556 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on
557 information obtained from the Central Criminal Records Exchange pursuant to Chapter 16 ~~or~~, 19, *or 26*
558 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to
559 the applicant or its designee;

560 39. The Department of Professional and Occupational Regulation for the purpose of investigating
561 individuals for initial licensure pursuant to § 54.1-2106.1;

562 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and
563 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment
564 and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11
565 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

566 41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

567 42. The State Treasurer for the purpose of determining whether a person receiving compensation for
568 wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

569 43. The Department of Social Services and directors of local departments of social services for the
570 purpose of screening individuals seeking to enter into a contract with the Department of Social Services
571 or a local department of social services for the provision of child care services for which child care
572 subsidy payments may be provided;

573 44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of
574 a juvenile's household when completing a predispositional or postdispositional report required by §
575 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233; and

576 45. Other entities as otherwise provided by law.

577 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records
578 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal
579 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons
580 designated in the order on whom a report has been made under the provisions of this chapter.

581 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to
582 before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the
583 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a
584 copy of conviction data covering the person named in the request to the person making the request;
585 however, such person on whom the data is being obtained shall consent in writing, under oath, to the
586 making of such request. A person receiving a copy of his own conviction data may utilize or further
587 disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data
588 subject, the person making the request shall be furnished at his cost a certification to that effect.

589 B. Use of criminal history record information disseminated to noncriminal justice agencies under this
590 section shall be limited to the purposes for which it was given and may not be disseminated further.

591 C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal
592 history record information for employment or licensing inquiries except as provided by law.

593 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records
594 Exchange prior to dissemination of any criminal history record information on offenses required to be
595 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is
596 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases
597 where time is of the essence and the normal response time of the Exchange would exceed the necessary
598 time period. A criminal justice agency to whom a request has been made for the dissemination of
599 criminal history record information that is required to be reported to the Central Criminal Records
600 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.
601 Dissemination of information regarding offenses not required to be reported to the Exchange shall be
602 made by the criminal justice agency maintaining the record as required by § 15.2-1722.

603 E. Criminal history information provided to licensed nursing homes, hospitals and to home care
604 organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange
605 for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

606 F. Criminal history information provided to licensed assisted living facilities and licensed adult day
607 care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange
608 for any offense specified in § 63.2-1720.

609 G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be
610 limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the
611 definition of barrier crime in § 19.2-392.02.

612 H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal

613 Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the
614 Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in
615 the request to the employer or prospective employer making the request, provided that the person on
616 whom the data is being obtained has consented in writing to the making of such request and has
617 presented a photo-identification to the employer or prospective employer. In the event no conviction data
618 is maintained on the person named in the request, the requesting employer or prospective employer shall
619 be furnished at his cost a certification to that effect. The criminal history record search shall be
620 conducted on forms provided by the Exchange.

621 **2. That the provisions of the first enactment of this act shall become effective on January 1, 2019.**

622 **3. That beginning October 1, 2018, the State Corporation Commission shall begin accepting**
623 **applications for licenses to be issued pursuant to Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2 of the**
624 **Code of Virginia, as created by this act, on and after January 1, 2019, provided that the**
625 **application process shall be consistent with the provisions of § 6.2-2602 of the Code of Virginia, as**
626 **created by this act. Upon the filing of such an application prior to January 1, 2019, the**
627 **Commissioner of Financial Institutions shall be authorized prior to such date to commence making**
628 **such investigations as he deems necessary to determine if the applicant has complied with all**
629 **applicable provisions of law and regulations, provided that such investigations are conducted in a**
630 **manner consistent with the provisions of § 6.2-2602 of the Code of Virginia, as created by this act.**

631 **4. That the State Corporation Commission (the Commission) shall provide a report to members of**
632 **the House and Senate Committees on Commerce and Labor, the House Committee on Education,**
633 **and the Senate Committee on Education and Health on or before November 1, 2020, that provides**
634 **data on (i) the volume and severity of complaints involving qualified education loans that are**
635 **investigated by the Commission; (ii) the number of licenses issued under Chapter 26 (§ 6.2-2600 et**
636 **seq.) of Title 6.2 of the Code of Virginia, as created by this act (the Chapter), the number of**
637 **applications for a license under the Chapter that have been denied, and the reasons for such**
638 **denials; (iii) the number of licensees under the Chapter that filed a written report with the**
639 **Commission pursuant to § 6.2-2608 of the Chapter, and for which of the events enumerated in**
640 **subdivisions 1 through 5 of § 6.2-2608 of the Chapter the written report was filed; (iv) the number**
641 **and nature of complaints received under the Chapter from qualified education loan borrowers**
642 **regarding matters within the scope of the Chapter; and (v) the number of investigations and**
643 **examinations resulting from such complaints and violations of the Chapter and the disposition of**
644 **such investigations and examinations.**