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SENATE BILL NO. 1053

Offered January 11, 2017

Prefiled January 6, 2017

A *BILL to amend the Code of Virginia by adding in Title 6.2 a chapter numbered 26, containing articles numbered 1 and 2, consisting of sections numbered 6.2-2600 through 6.2-2619, relating to student loans; licensing of student loan servicers; Office of the Student Loan Ombudsman; civil penalties.*

Patrons—Howell, Ebbin, Mason 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, containing articles numbered 1 and 2, consisting of sections numbered 6.2-2600 through 6.2-2619, as follows:

CHAPTER 26.

STUDENT LOAN BILL OF RIGHTS.

Article 1.

Office of the Student Loan Ombudsman.

§ 6.2-2600. Office of the Student Loan Ombudsman established; duties.

A. The Commission shall create within the Bureau 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 § 6.2-2603, of any student education loan, as defined in § 6.2-2603, 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, in consultation with the Commissioner, 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 § 6.2-2603, 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.

§ 6.2-2601. Student loan borrower education course.

On or before December 1, 2017, the Office of the Student Loan Ombudsman, in consultation with the Commissioner, 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.

§ 6.2-2602. Reports.

On or before January 1, 2018, and annually thereafter, the Commissioner 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, (ii) the overall effectiveness of the Office of the Student Loan Ombudsman, and (iii) additional steps that need to be taken for the Commission to gain regulatory control over the licensing and enforcement of student loan servicers.

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Article 2.

Student Loan Servicers.

§ 6.2-2603. Definitions.

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

"Licensee" means a student loan servicer licensed under this article.

"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.

"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.

§ 6.2-2604. 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 § 6.2-2605, unless such person is exempt from licensure pursuant to subsection B.

B. The following persons are exempt from student loan servicer licensing requirements and all other provisions of this article:

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

§ 6.2-2605. Licensing procedures; applications; renewals.

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

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

1. The applicant's financial condition is sound;

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

3. If the applicant is an individual, such individual is in all respects properly qualified and of good character; if the applicant is a partnership, each partner is in all respects properly qualified and of good character; if the applicant is a corporation or association, the president, chairman of the executive committee, senior officer responsible for the corporation's business, and chief financial officer or any

other person who performs similar functions, as determined by the Commissioner, and each director, each trustee, and each shareholder owning 10 percent or more of each class of the securities of such corporation is in all respects properly qualified and of good character; or if the applicant is a limited liability company, each member is in all respects properly qualified and of good character;

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

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

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

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

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

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

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

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

H. The Commissioner may deem an application for a license abandoned if the applicant fails to respond to any request for information required under this article. The Commissioner shall notify the 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 article.

§ 6.2-2606. Bond required.

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

182 aggregate liability under the bond shall not exceed the penal sum of the bond.

183 **§ 6.2-2607. Place of business.**

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

190 **§ 6.2-2608. Records.**

191 A. Each licensee shall maintain adequate records of each student education loan transaction for not
192 less than two years following the final payment on such student education loan or the assignment of
193 such student education loan, whichever occurs first, or such longer period as may be required by any
194 other provision of law.

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

200 **§ 6.2-2609. Acquisition of control; application.**

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

204 1. Files an application with the Commission in such form as the Commissioner may prescribe from
205 time to time;

206 2. Delivers such other information to the Commissioner as the Commissioner may require concerning
207 the financial responsibility, background, experience, and activities of the applicant, its directors, senior
208 officers, principals, and members and of any proposed new directors, senior officers, principals, or
209 members of the licensee; and

210 3. Pays such application fee as the Commission may prescribe.

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

220 C. The provisions of this section shall not apply to the acquisition of an interest in a licensee (i)
221 directly or indirectly, including an acquisition by merger or consolidation by or with a person licensed
222 under this article; (ii) directly or indirectly, by merger or consolidation by or with a person affiliated
223 through common ownership with the licensee; or (iii) by bequest, descent, survivorship, or operation of
224 law. The person acquiring an interest in a licensee in a transaction that is exempt from filing an
225 application by this subsection shall send written notice to the Commissioner of such acquisition within
226 30 days of its closing.

227 **§ 6.2-2610. Prohibited activities.**

228 No student loan servicer shall:

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

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

235 3. Obtain property by fraud or misrepresentation;

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

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

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

243 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.

§ 6.2-2611. Other reporting requirements.

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

1. The filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee;

2. The institution of administrative or regulatory proceedings against the licensee by any governmental authority;

3. Any felony indictments of the licensee or any of its members, partners, directors, officers, or principals;

4. Any felony conviction of the licensee or any of its members, partners, directors, officers, or principals; and

5. Such other event as the Commission may prescribe by regulation.

§ 6.2-2612. 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 article insofar as they pertain to any business for which a license is required by this article. 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 article 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 article as often as necessary in order to carry out the purposes of this article. The Commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the student education loan or the business or subject matter of any such examination or investigation and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the Commissioner deems relevant to the inquiry.

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

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

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

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

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

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

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

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

§ 6.2-2613. Annual fees.

A. In order to defray the costs of their examination, supervision, and regulation, every licensee under this article shall pay an annual fee calculated in accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to the business volume of such licensees, the actual

costs of their examinations, and other factors relating to their supervision and regulation. All such fees shall be assessed on or before September 15 for every calendar year. All such fees shall be paid by the licensee to the State Treasurer on or before October 15 following each assessment.

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

§ 6.2-2614. Suspension, revocation, or refusal to renew license.

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

1. Any ground for denial of a license under this article;
2. Any violation of the provisions of this article or regulations adopted by the Commission pursuant thereto or a violation of any other law or regulation applicable to the conduct of the student loan servicer's business;
3. A course of conduct consisting of the failure to perform written agreements with student loan borrowers;
4. Failure to account for funds received or disbursed to the satisfaction of the person supplying or receiving student loan funds;
5. Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit;
6. Entry of a judgment against the licensee involving fraud, misrepresentation, or deceit;
7. Entry of a federal or state administrative order against the student loan servicer for violation of any law or any regulation applicable to the conduct of the student loan servicer's business;
8. Refusal to permit an investigation or examination by the Commission;
9. Failure to pay any fee or assessment imposed by this article; or
10. Failure to comply with any order of the Commission.

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

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

§ 6.2-2615. Notice of proposed suspension or revocation.

The Commission shall not revoke or suspend the license of any licensee upon any of the grounds set forth in § 6.2-2614 until it has given the student loan servicer (i) 21 days' notice in writing of the reasons for the proposed revocation or suspension and (ii) an opportunity to introduce evidence and be heard. The notice shall be sent by certified mail to the principal place of business of such licensee and shall state with particularity the grounds for the contemplated action. Within 14 days of mailing the notice, the licensee named therein may file with the clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not suspend or revoke the license except based upon findings made at such hearing. The hearing shall be conducted in accordance with the provisions of Title 12.1.

§ 6.2-2616. Cease and desist orders.

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

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

§ 6.2-2617. Compliance with federal laws.

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 article and a basis upon which the Commissioner may take enforcement action pursuant to § 6.2-2614, 6.2-2616, or 6.2-2618.

§ 6.2-2618. Civil penalties.

367 The Commission may impose a civil penalty not exceeding \$2,500 upon any person required to be
368 licensed under this article who the Commission determines, in proceedings commenced in accordance
369 with the Commission's Rules, has violated any of the provisions of this article or any other law or
370 regulation applicable to the licensee's activities. For the purposes of this section, each separate violation
371 shall be subject to the civil penalty herein prescribed, and each day that an unlicensed person engages
372 in the business of a student loan servicer shall constitute a separate violation.

373 **§ 6.2-2619. Regulations.**

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

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