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SENATE BILL NO. 1053

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance  
on February 1, 2017)

(Patron Prior to Substitute—Senator Howell)

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 6.2-2619, relating to student loans; licensing of qualified education loan servicers; civil penalties.

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 6.2-2619, 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 student 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" has the same meaning as provided in 26 U.S.C. § 221(d).

"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 contractually shares responsibility with such resident for repaying the qualified education loan.

"Qualified education loan servicer" or "loan servicer" means any person, regardless of whether the person has a location in the Commonwealth, 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 student loan servicer.

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

1. Any bank or credit union;
2. Any wholly owned subsidiary of any bank or credit union; and
3. Any public or private nonprofit institution of higher education.

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

Any person seeking to act as a qualified education 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 pursuant to § 6.2-2604;

3. Personal history and experience on 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;

60 4. Such other information concerning the financial responsibility, background, experience, and  
61 activities of the applicant and its partners, members, officers, directors, and principal employees as the  
62 Commissioner may require;

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

64 6. A nonrefundable investigation fee in an amount prescribed by the Commission by rule or order.

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

67 **§ 6.2-2603. Investigation of applications.**

68 A. The Commissioner may make such investigations as he deems necessary to determine if the  
69 applicant has complied with all applicable provisions of law and regulations.

70 B. For the purpose of investigating individuals who are partners, members, officers, directors, or  
71 principal employees of an applicant, such persons shall consent to a national and state criminal history  
72 records check and submit to fingerprinting. Each partner, member, officer, director, or principal shall  
73 pay for the cost of such fingerprinting and criminal records check. Such persons shall cause their  
74 fingerprints, personal descriptive information, and records check fees to be submitted to the following,  
75 as prescribed by the Commission:

76 1. The Commissioner, who shall forward these items to the Central Criminal Records Exchange. The  
77 Central Criminal Records Exchange shall (i) conduct a search of its own criminal history records and  
78 forward such individuals' fingerprints and personal descriptive information to the Federal Bureau of  
79 Investigation for the purpose of obtaining national criminal history record information regarding such  
80 individuals and (ii) forward the results of the state and national records search to the Commissioner or  
81 his designee, who shall be an employee of the Commission; or

82 2. The Registry, provided that it is capable of processing such criminal history records check.

83 C. If any partner, member, officer, director, or principal of an applicant fails to cause his  
84 fingerprints, personal descriptive information, or records check fees to be submitted in accordance with  
85 subdivision 1, the application for licensure as a qualified education loan servicer shall be denied.

86 **§ 6.2-2604. Issuance of license.**

87 A. Upon the filing of an application for an initial license and the payment of the fees for license and  
88 investigation, the Commissioner shall make such investigations as he deems necessary to determine if  
89 the applicant has complied with all applicable provisions of law and regulations. The Commissioner  
90 shall issue a license if the Commissioner finds that:

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

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

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

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

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

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

109 B. If the Commissioner fails to make such findings, no license shall be issued and the Commissioner  
110 shall notify the applicant of the denial and the reasons for such denial.

111 C. A license issued pursuant to this section shall expire at the close of business on December 31 of  
112 the second year following its issuance, unless renewed or earlier surrendered, suspended, or revoked  
113 pursuant to this chapter. Not later than 15 days after a licensee ceases to engage in the business of  
114 qualified education loan servicing in the Commonwealth for any reason, including a business decision to  
115 terminate operations in the Commonwealth, license revocation, bankruptcy, or voluntary dissolution, the  
116 licensee shall provide written notice of surrender to the Commissioner and shall surrender to the  
117 Commissioner its license for each location in which the licensee has ceased to engage in such business.  
118 The written notice of surrender shall identify the location where the records of the licensee will be  
119 stored and the name, address, and telephone number of an individual authorized to provide access to  
120 the records. The surrender of a license does not reduce or eliminate the licensee's civil or criminal  
121 liability arising from acts or omissions occurring prior to the surrender of the license, including any

122 administrative actions undertaken by the Commission to revoke or suspend a license, assess a civil  
123 penalty, order restitution, or exercise any other authority provided to the Commission.

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

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

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

144 G. The Commissioner may deem an application for a license abandoned if the applicant fails to  
145 respond to any request for information required under this chapter. The Commissioner shall notify the  
146 applicant, in writing, that if the applicant fails to submit such information not later than 60 days after  
147 the date on which such request for information was made, the application shall be deemed abandoned.  
148 An application filing fee paid prior to the date an application is deemed abandoned pursuant to this  
149 subsection shall not be refunded. Abandonment of an application pursuant to this subsection shall not  
150 preclude the applicant from submitting a new application for a license under the provisions of this  
151 chapter.

152 **§ 6.2-2605. Bond required.**

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

163 **§ 6.2-2606. Place of business.**

164 No person licensed as a qualified education loan servicer shall do so under any other name or at  
165 any other place of business than that named in the license. Any change of location of a place of  
166 business of a licensee shall require prior written notice to the Commissioner. Not more than one place  
167 of business shall be maintained under the same license, but the Commissioner may issue more than one  
168 license to the same licensee upon compliance with the provisions of this chapter to apply for and obtain  
169 a license as to each new licensee. No licensee shall open an additional office without prior approval of  
170 the Commissioner. Applications for such approval shall be made in writing on a form provided by the  
171 Commissioner and shall be accompanied by payment of a \$150 nonrefundable application fee. The  
172 application shall be approved unless the Commissioner finds that the applicant has not conducted  
173 business under this chapter efficiently, fairly, in the public interest, and in accordance with law. The  
174 application for approval shall be deemed approved if notice to the contrary has not been mailed by the  
175 Commissioner to the applicant within 30 days of the date the application is received by the  
176 Commissioner. A license shall not be transferable or assignable.

177 **§ 6.2-2607. Records.**

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

182 B. If requested by the Commissioner, each licensee shall make such records available or send such

183 records to the Commissioner by registered or certified mail, return receipt requested, or by any express  
 184 delivery carrier that provides a dated delivery receipt, not later than five business days after requested  
 185 by the Commissioner to do so. Upon request, the Commissioner may grant a licensee additional time to  
 186 make such records available or send the records to the Commissioner.

187 **§ 6.2-2608. Acquisition of control; application.**

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

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

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

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

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

207 C. The provisions of this section shall not apply to the acquisition of an interest in a licensee (i)  
 208 directly or indirectly, including an acquisition by merger or consolidation by or with a person licensed  
 209 under this chapter; (ii) directly or indirectly, by merger or consolidation by or with a person affiliated  
 210 through common ownership with the licensee; or (iii) by bequest, descent, survivorship, or operation of  
 211 law. The person acquiring an interest in a licensee in a transaction that is exempt from filing an  
 212 application by this subsection shall send written notice to the Commissioner of such acquisition within  
 213 30 days of its closing.

214 **§ 6.2-2609. Prohibited activities.**

215 No qualified education loan servicer shall:

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

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

223 3. Obtain property by fraud or misrepresentation;

224 4. Misapply qualified education loan payments to the outstanding balance of a qualified education  
 225 loan;

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

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

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

234 8. Make any false statement or make any omission of a material fact in connection with any  
 235 information or reports filed with a governmental agency or in connection with any investigation  
 236 conducted by the Commission or another governmental agency; or

237 9. Engage in any other prohibited activities described in regulations adopted pursuant to this  
 238 chapter.

239 **§ 6.2-2610. Other reporting requirements.**

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

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

244 2. The institution of administrative or regulatory proceedings against the licensee by any

245 governmental authority;

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

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

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

251 **§ 6.2-2611. Investigations; examinations.**

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

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

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

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

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

278 3. Use, hire, contract, or employ public or privately available analytical systems, methods, or  
279 software to examine or investigate the qualified education loan servicer licensee or person subject to  
280 this chapter;

281 4. In lieu of an examination, accept the examination report of the federal government or another  
282 state; and

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

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

290 E. No qualified education loan servicer licensee or person subject to investigation or examination  
291 under this section shall withhold, abstract, remove, mutilate, destroy, or secrete any books, records,  
292 computer records, or other information.

293 **§ 6.2-2612. Annual fees.**

294 A. In order to defray the costs of their examination, supervision, and regulation, every licensee under  
295 this chapter shall pay an annual fee calculated in accordance with a schedule set by the Commission.  
296 The schedule shall bear a reasonable relationship to the business volume of such licensees, the actual  
297 costs of their examinations, and other factors relating to their supervision and regulation. All such fees  
298 shall be assessed on or before December 15 for every calendar year. All such fees shall be paid by the  
299 licensee to the State Treasurer on or before January 15 following each assessment.

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

306 **§ 6.2-2613. Suspension, revocation, or refusal to renew license.**

307 A. The Commission may suspend, revoke, or fail to renew any license issued under the provisions of  
308 this chapter if the Commission finds:

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

310 2. Any violation of the provisions of this chapter or regulations adopted by the Commission pursuant  
311 thereto or a violation of any other law or regulation applicable to the conduct of the qualified loan  
312 servicer's business;

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

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

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

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

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

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

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

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

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

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

329 **§ 6.2-2614. Notice of proposed suspension or revocation.**

330 The Commission shall not revoke or suspend the license of any licensee upon any of the grounds set  
331 forth in § 6.2-2613 until it has given the qualified education loan servicer (i) 21 days' notice in writing  
332 of the reasons for the proposed revocation or suspension and (ii) an opportunity to introduce evidence  
333 and be heard. The notice shall be sent by certified mail to the principal place of business of such  
334 licensee and shall state with particularity the grounds for the contemplated action. Within 14 days of  
335 mailing the notice, the licensee named therein may file with the clerk of the Commission a written  
336 request for a hearing. If a hearing is requested, the Commission shall not suspend or revoke the license  
337 except based upon findings made at such hearing. The hearing shall be conducted in accordance with  
338 the provisions of Title 12.1.

339 **§ 6.2-2615. Cease and desist orders.**

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

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

352 **§ 6.2-2616. Compliance with federal laws.**

353 A qualified education loan servicer shall comply with all applicable federal laws and regulations  
354 relating to qualified education loan servicing, including, but not limited to, the Truth in Lending Act, 15  
355 U.S.C. § 1601 et seq., as amended, and regulations promulgated thereunder. In addition to any other  
356 remedies provided by law, a violation of any such federal law or regulation shall be deemed a violation  
357 of this chapter and a basis upon which the Commissioner may take enforcement action pursuant to  
358 § 6.2-2613, 6.2-2615, or 6.2-2617.

359 **§ 6.2-2617. Civil penalties.**

360 The Commission may impose a civil penalty not exceeding \$2,500 upon any person required to be  
361 licensed under this chapter who the Commission determines, in proceedings commenced in accordance  
362 with the Commission's Rules, has violated any of the provisions of this chapter or any other law or  
363 regulation applicable to the licensee's activities. For the purposes of this section, each separate violation  
364 shall be subject to the civil penalty herein prescribed, and each day that an unlicensed person engages  
365 in the business of a qualified education loan servicer shall constitute a separate violation.

366 **§ 6.2-2618. Nationwide Mortgage Licensing System and Registry.**

367 A. Any person required to be licensed as a qualified education loan servicer pursuant to this chapter

368 shall also be required to register with the Nationwide Mortgage Licensing System and Registry as a  
 369 condition for obtaining a license. Such person shall be subject to such registration and renewal  
 370 requirements as may be established by the Registry, in addition to the requirements of this chapter.  
 371 Regulations adopted by the Commission pursuant to § 6.2-2619 shall include any terms, conditions, or  
 372 requirements applicable to such registration and renewal. Any fees required by the Registry shall be  
 373 separate and apart from any fees imposed by this chapter.

374 B. The Commission may include in its regulations adopted pursuant to § 6.2- 2619 authorization for  
 375 the Registry to collect any fees imposed by this chapter and to remit such fees to the Commission.

376 **§ 6.2-2619. Regulations.**

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

381 **§ 19.2-389. Dissemination of criminal history record information.**

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

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

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

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

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

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

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

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

422 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of  
 423 Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a  
 424 position of employment whenever, in the interest of public welfare or safety and as authorized in the  
 425 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person  
 426 with a conviction record would be compatible with the nature of the employment under consideration;

427 8. Public or private agencies when authorized or required by federal or state law or interstate  
 428 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the

429 adult members of that individual's household, with whom the agency is considering placing a child or  
430 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,  
431 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that  
432 the data shall not be further disseminated to any party other than a federal or state authority or court as  
433 may be required to comply with an express requirement of law;

434 9. To the extent permitted by federal law or regulation, public service companies as defined in  
435 § 56-1, for the conduct of investigations of applicants for employment when such employment involves  
436 personal contact with the public or when past criminal conduct of an applicant would be incompatible  
437 with the nature of the employment under consideration;

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

440 11. A person requesting a copy of his own criminal history record information as defined in  
441 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a  
442 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of  
443 America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any  
444 affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board  
445 member or any individual who has been offered membership on the board of a Crime Stoppers, Crime  
446 Solvers or Crime Line program as defined in § 15.2-1713.1;

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

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

459 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law  
460 (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of  
461 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

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

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

469 17. (Effective until July 1, 2018) The Alcoholic Beverage Control Board for the conduct of  
470 investigations as set forth in § 4.1-103.1;

471 17. (Effective July 1, 2018) The Virginia Alcoholic Beverage Control Authority for the conduct of  
472 investigations as set forth in § 4.1-103.1;

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

476 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who  
477 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,  
478 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

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

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

486 22. The Department of Behavioral Health and Developmental Services and facilities operated by the  
487 Department for the purpose of determining an individual's fitness for employment pursuant to  
488 departmental instructions;

489 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or  
490 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such

491 records information on behalf of such governing boards or administrators pursuant to a written  
492 agreement with the Department of State Police;

493 24. Public and nonprofit private colleges and universities for the purpose of screening individuals  
494 who are offered or accept employment;

495 25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4,  
496 by a public institution of higher education pursuant to § 23-9.2:10, or by a private nonprofit institution  
497 of higher education, for the purpose of assessing or intervening with an individual whose behavior may  
498 present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal  
499 history record information obtained pursuant to this section or otherwise use any record of an individual  
500 beyond the purpose that such disclosure was made to the threat assessment team;

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

507 26. Executive directors of community services boards or the personnel director serving the  
508 community services board for the purpose of determining an individual's fitness for employment,  
509 approval as a sponsored residential service provider, or permission to enter into a shared living  
510 arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to  
511 §§ 37.2-506 and 37.2-607;

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

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

519 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of  
520 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the  
521 purpose of determining if any applicant who accepts employment in any direct care position or requests  
522 approval as a sponsored residential service provider or permission to enter into a shared living  
523 arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted  
524 of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with  
525 mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and  
526 37.2-607;

527 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants  
528 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20  
529 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

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

533 32. Heads of state agencies in which positions have been identified as sensitive for the purpose of  
534 determining an individual's fitness for employment in positions designated as sensitive under Department  
535 of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal  
536 history record information to the agencies shall be limited to those positions generally described as  
537 directly responsible for the health, safety and welfare of the general populace or protection of critical  
538 infrastructures;

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

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

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

548 36. Public agencies when and as required by federal or state law to investigate (i) applicants as  
549 providers of adult foster care and home-based services or (ii) any individual with whom the agency is  
550 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,  
551 subject to the restriction that the data shall not be further disseminated by the agency to any party other

552 than a federal or state authority or court as may be required to comply with an express requirement of  
553 law for such further dissemination, subject to limitations set out in subsection G;

554 37. The Department of Medical Assistance Services, or its designee, for the purpose of screening  
555 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,  
556 or have accepted a position related to the provision of transportation services to enrollees in the  
557 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other  
558 program administered by the Department of Medical Assistance Services;

559 38. The State Corporation Commission for the purpose of investigating individuals who are current  
560 or proposed members, senior officers, directors, and principals of an applicant or person licensed under  
561 Chapter 16 (§ 6.2-1600 et seq.) ~~or Chapter~~, 19 (§ 6.2-1900 et seq.), *or 26* (§ 6.2-2600 et seq.) of Title  
562 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on  
563 information obtained from the Central Criminal Records Exchange pursuant to Chapter 16 ~~or~~, 19, *or 26*  
564 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to  
565 the applicant or its designee;

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

568 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and  
569 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment  
570 and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11  
571 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

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

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

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

579 44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of  
580 a juvenile's household when completing a predispositional or postdispositional report required by  
581 § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233; and

582 45. Other entities as otherwise provided by law.

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

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

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

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

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

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

612 F. Criminal history information provided to licensed assisted living facilities and licensed adult day  
613 care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange

614 for any offense specified in § 63.2-1720.

615 G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be  
616 limited to the convictions on file with the Exchange for any offense specified in § 63.2-1719.

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

626 **2. That the provisions of this act shall become effective on July 1, 2018.**

627 **3. That the State Corporation Commission (Commission) shall provide a report to members of the**  
628 **House and Senate Committees on Commerce and Labor, the House Committee on Education, and**  
629 **the Senate Committee on Education and Health on or before November 1, 2019, that provides**  
630 **data on (i) the volume and severity of complaints involving qualified education loans that are**  
631 **investigated by the Commission; (ii) the number of licenses issued under Chapter 26 (§ 6.2-2600 et**  
632 **seq.) of Title 6.2 of the Code of Virginia, as created by this act (the Chapter), the number of**  
633 **applications for a license under the Chapter that have been denied and the reasons for such**  
634 **denials; (iii) the number of licensees under the Chapter that filed a written report with the**  
635 **Commission pursuant to § 6.2-2610 of the Chapter, and for which of the events enumerated in**  
636 **subdivisions 1 through 5 of § 6.2-2610 of the Chapter the written report was filed; (iv) the number**  
637 **and nature of complaints received under the Chapter from qualified education loan borrowers**  
638 **regarding matters within the scope of the Chapter; (v) the number of investigations and**  
639 **examinations resulting from such complaints and violations of the Chapter and the disposition of**  
640 **such investigations and examinations; and (vi) an assessment of whether the number, severity, and**  
641 **nature of the complaints received from such borrowers and the number and severity of complaints**  
642 **and violations found to be valid upon investigation or examination warrants the need to establish**  
643 **a qualified education loan ombudsman's office.**