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SENATE BILL NO. 1112

Offered January 9, 2019

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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 student loans; licensing of qualified education loan servicers; civil penalties.

Patrons—Howell, Dunnavant and Ebbin; Delegates: Plum and Price

Referred to Committee on Commerce and Labor

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 person to whom a license has been issued under this chapter.

"Nationwide Multistate Licensing System and Registry" or "Registry" means the nationwide multistate licensing system and registry created 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 used to finance a postsecondary education and costs of attendance at a postsecondary public or private educational institution, including tuition, fees, books and supplies, room and board, transportation, and miscellaneous personal expenses. "Qualified education loan" includes a loan made to refinance a qualified education loan. "Qualified education loan" does not include an extension of credit under an open-end credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling.

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

"Qualified education loan servicer" or "loan servicer" means any person that engages in the business of servicing qualified education loans owed by qualified education loan borrowers.

"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 requirement; exceptions.

A. No person shall act as a qualified education loan servicer, whether or not the person has an office or any other physical presence in the Commonwealth, except in accordance with the provisions of this chapter and without having first obtained a license under this chapter from the Commission.

B. Every qualified education loan servicer required to be licensed under this chapter shall register with the Registry and be subject to such registration and renewal requirements as may be established by the Registry, in addition to any requirements of this chapter. In adopting regulations pursuant to § 6.2-2617, the Commission shall include any terms, conditions, or requirements applicable to such registration and renewal. Any fees required by the Registry shall be separate and apart from any fees imposed by this chapter. The Commission, at its discretion, may collect any registration and renewal fees on behalf of the Registry and remit such fees to the Registry or permit the Registry to collect any fees imposed by this chapter and remit such fees to the Commission.

C. In connection with its implementation and administration of this chapter, the Commission may establish agreements or contracts with the Registry or other entities designated by the Registry to collect, distribute, and maintain information and records, and process fees, related to qualified education loan servicers required to be licensed under this chapter. In establishing such agreements or

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59 contracts, the Commission shall not be subject to the Virginia Public Procurement Act (§ 2.2-4300 et
60 seq.).

61 D. The provisions of this chapter shall not apply to:

62 1. Any bank, savings institution, or credit union;

63 2. Any wholly owned subsidiary of any bank, savings institution, or credit union, provided that such
64 wholly owned subsidiary is subject to the general supervision or regulation of, or subject to audit or
65 examination by, a regulatory body or agency of the United States or any state; or

66 3. Any public or private nonprofit institution of higher education.

67 **§ 6.2-2602. Application for license; form; content; fee.**

68 A. An application for a license under this chapter shall be made in writing, under oath, and on a
69 form provided by the Commissioner.

70 B. The application shall set forth:

71 1. The name and address of the applicant, the name and address of each senior officer, and (i) if the
72 applicant is a partnership, firm, or association, the name and address of each partner or member; (ii) if
73 the applicant is a corporation or limited liability company, the name and address of each director,
74 member, registered agent, and principal; or (iii) if the applicant is a business trust, the name and
75 address of each trustee;

76 2. The address of the principal place of business to be licensed;

77 3. Such other information concerning the financial responsibility, background, experience, and
78 general fitness of the applicant and its members, senior officers, directors, trustees, and principals as
79 the Commissioner may require; and

80 4. Any other pertinent information that the Commissioner may require.

81 C. The application shall be accompanied by payment of a nonrefundable application fee as
82 prescribed by the Commission. The fee shall not be abated by surrender, suspension, or revocation of
83 the license.

84 D. If the Commissioner requests information to complete a deficient application and the information
85 is not received within 60 days of the Commissioner's request, the application shall be deemed
86 abandoned unless a request for an extension of time is received and approved by the Commissioner
87 prior to the expiration of the 60-day period. However, this subsection shall not be construed to prohibit
88 the Commission from denying a license application that does not meet the requirements of this chapter.

89 **§ 6.2-2603. Bond required.**

90 The application for a license shall be accompanied by a bond filed with the Commissioner with
91 corporate surety authorized to execute such bond, in the principal amount as determined by the
92 Commissioner. The amount of the bond shall be not less than \$50,000 nor more than \$500,000. The
93 form of such bond shall be approved by the Commissioner. Such bond shall be continuously maintained
94 thereafter in full force. Such bond shall be conditioned upon the applicant or licensee performing all
95 written agreements pertaining to qualified education loans, correctly and accurately accounting for all
96 funds received by the applicant or licensee in connection with qualified education loans, and conducting
97 its business in conformity with this chapter and all applicable laws. Any person who may be damaged
98 by noncompliance of the applicant or licensee with any condition of such bond may proceed on such
99 bond against the principal or surety thereon, or both, to recover damages. The aggregate liability under
100 the bond shall not exceed the penal sum of the bond.

101 **§ 6.2-2604. Investigation of applications.**

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

104 B. For the purpose of investigating individuals who are members, senior officers, directors, trustees,
105 and principals of an applicant, such persons shall consent to a criminal history records check and
106 submit to fingerprinting. Each member, senior officer, director, trustee, and principal shall pay for the
107 cost of such fingerprinting and criminal history records check. Such persons shall cause their
108 fingerprints, personal descriptive information, and records check fees to be submitted to either of the
109 following, as prescribed by the Commission:

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

116 2. The Registry, provided that it is capable of processing criminal history records checks.

117 C. If any member, senior officer, director, trustee, or principal of an applicant fails to cause his
118 fingerprints, personal descriptive information, or records check fees to be submitted in accordance with
119 subsection B, the application for a qualified education loan servicer license shall be denied.

120 **§ 6.2-2605. Qualifications.**

A. Upon the filing and investigation of an application for a license, compliance by the applicant with the provisions of §§ 6.2-2602 and 6.2-2603, and compliance by the persons identified in subsection B of § 6.2-2604 with the provisions contained therein, the Commission shall issue and deliver to the applicant the license applied for to engage in business under this chapter at the location specified in the application if it finds that:

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

2. The application does not contain any false statement of a material fact; and

3. The application does not omit any statement of a material fact that is required by § 6.2-2602.

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

§ 6.2-2606. Licenses; place of business; changes; renewal.

A. Each license shall state the address at which the principal place of business is to be conducted and shall state fully the legal name of the licensee as well as any fictitious names by which the licensee is conducting business under this chapter. Licenses shall not be transferable or assignable, by operation of law or otherwise. No licensee shall use any names other than the legal name or fictitious names set forth on the license issued by the Commission.

B. Every licensee shall notify the Commissioner, in writing, at least 30 days prior to relocating its principal place of business and confirm the change in writing within five days after such relocation.

C. Every licensee shall within 10 days notify the Commissioner, in writing, of (i) any change to its legal name; (ii) any change to or additional fictitious name by which the licensee is conducting business under this chapter; and (iii) the name, address, and position of each new member, senior officer, director, trustee, and principal. At the direction of the Commissioner, any such individual shall be treated as a member, senior officer, director, trustee, or principal of an applicant for the purpose of being investigated pursuant to subsection B of § 6.2-2604. The licensee shall provide such other information with respect to the changes and persons identified in this subsection as the Commissioner may reasonably require.

D. Every license shall remain in force until it expires or has been surrendered, revoked, or suspended. The expiration, surrender, revocation, or suspension of a license shall not affect any preexisting legal right or obligation of such licensee.

E. Notwithstanding any other provision of this chapter, a qualified education loan servicer license shall expire at the end of each calendar year unless it is renewed by a licensee prior to the expiration date. A licensee may renew its license by (i) requesting renewal through the Registry and (ii) complying with any requirements associated with such renewal request that are imposed by the Registry. If a qualified education loan servicer license has expired, the Commission may by regulation permit the former licensee to seek license reinstatement after the license expiration date by renewing its license in accordance with this subsection and paying a reinstatement fee as prescribed by the Commission.

§ 6.2-2607. Retention of records; responding to the Bureau.

A. Each licensee shall maintain in its principal place of business such books, accounts, and records as the Commissioner may reasonably require in order to determine whether such person is complying with the provisions of this chapter and other laws applicable to the conduct of its business. Such books, accounts, and records shall be maintained apart and separate from any other business in which the qualified education loan servicer is involved. Each licensee shall maintain adequate records of each qualified education loan transaction for at least three years after final payment is made on such loan or the assignment of such qualified education loan, whichever occurs first.

B. To safeguard the privacy of qualified education loan borrowers, records containing personal financial information shall be shredded, incinerated, or otherwise disposed of by a licensee in a secure manner. Licensees may arrange for the shredding, incineration, or other disposal of the records from a business record destruction vendor.

C. When the Bureau requests a written response, books, records, documentation, or other information from a licensee in connection with the Bureau's investigation, enforcement, or examination of compliance with applicable laws, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the Bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the Bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the Bureau and when considering a request for an extension of time to respond, the Bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information and such other factors as the Bureau determines to be relevant under the circumstances.

§ 6.2-2608. Acquisition of control; application.

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

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

187 2. Delivers such other information to the Commissioner as the Commissioner may require concerning
188 the financial responsibility, background, experience, and general fitness of the applicant and of any
189 proposed new directors, senior officers, principals, trustees, or members of the licensee;

190 3. Submits and furnishes to the Commissioner information concerning the identity of the applicant
191 and of any proposed new directors, senior officers, principals, trustees, or members of the licensee. Such
192 individuals shall (i) consent to a criminal history records check, submit to fingerprinting, and pay for
193 the cost of such fingerprinting and criminal records check and (ii) cause their fingerprints, personal
194 descriptive information, and records check fees to be submitted to either of the following, as prescribed
195 by the Commission:

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

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

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

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

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

220 **§ 6.2-2609. Prohibited activities; compliance with federal laws and regulations.**

221 A. No qualified education loan servicer shall:

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

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

229 3. Obtain property by fraud or misrepresentation;

230 4. Misapply qualified education loan payments to the outstanding balance of a qualified education
231 loan;

232 5. Provide inaccurate information to a nationally recognized consumer credit bureau;

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

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

239 8. Make any false statement of a material fact or omit any material fact in connection with any
240 information provided to the Commission or another governmental authority; or

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

243 B. A qualified education loan servicer shall comply with all federal laws and regulations applicable

to the conduct of its licensed business. In addition to any other remedies provided by law, a violation of any such federal law or regulation shall be deemed a violation of this chapter and a basis upon which the Commission may take enforcement action pursuant to § 6.2-2613, 6.2-2615, or 6.2-2616.

§ 6.2-2610. Reporting requirements.

A. 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 indictment of the licensee or any of its members, directors, senior officers, trustees, or principals;
4. Any felony conviction of the licensee or any of its members, directors, senior officers, trustees, or principals; and
5. Such other events as the Commission may prescribe by regulation.

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

§ 6.2-2611. Investigations; examinations.

A. The Commission may, as often as it deems necessary, investigate and examine the affairs, business, premises, and records of any person licensed or required to be licensed under this chapter insofar as they pertain to any business for which a license is required by this chapter. Examinations of licensees 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, trustees, and employees of the person 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. Examinations under this section may be conducted in conjunction with examinations to be performed by representatives of agencies of the federal government or another state. In lieu of conducting an examination, the Commission may accept the examination report of the federal government or another state.

§ 6.2-2612. Annual fees.

A. In order to defray the costs of their examination, supervision, and regulation, every licensee under this chapter 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 April 1 for every calendar year. All such fees shall be paid by the licensee to the State Treasurer on or before May 1 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 chapter 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.

§ 6.2-2613. Suspension or revocation of license.

A. The Commission may suspend or revoke any license issued under this chapter upon any of the following grounds:

1. Any ground for denial of a license under this chapter;
2. Any violation of the provisions of this chapter or regulations adopted by the Commission pursuant thereto, or a violation of any other law or regulation applicable to the conduct of the licensee's business;
3. A course of conduct consisting of the failure to perform written agreements with qualified education loan borrowers;
4. Failure to account for funds received or disbursed to the satisfaction of the person supplying or receiving qualified education 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 licensee for violation of any law or

305 regulation applicable to the conduct of the licensee's business;

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

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

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

309 B. For the purposes of this section, acts of any officer, director, member, partner, trustee, or
310 principal shall be deemed acts of the licensee.

311 **§ 6.2-2614. Notice of proposed suspension or revocation.**

312 The Commission shall not revoke or suspend the license of any licensee upon any of the grounds set
313 forth in § 6.2-2613 until it has given the licensee (i) 21 days' notice in writing of the reasons for the
314 proposed revocation or suspension and (ii) an opportunity to introduce evidence and be heard. The
315 notice shall be sent by certified mail to the principal place of business of such licensee and shall state
316 with particularity the grounds for the contemplated action. Within 14 days of mailing the notice, the
317 licensee named therein may file with the Clerk of the Commission a written request for a hearing. If a
318 hearing is requested, the Commission shall not suspend or revoke the license except based upon findings
319 made at such hearing. The hearing shall be conducted in accordance with the Commission's Rules.

320 **§ 6.2-2615. Cease and desist orders.**

321 A. If the Commission determines that any person has violated any provision of this chapter or any
322 regulation adopted by the Commission pursuant thereto, or violated any other law or regulation
323 applicable to the conduct of a licensee's business, the Commission may, upon 21 days' notice in writing,
324 order such person to cease and desist from such practices and to comply with the provisions of this
325 chapter and other applicable laws and regulations. The notice shall be sent by certified mail to the
326 principal place of business of such person or other address authorized under § 12.1-19.1 and shall state
327 the grounds for the contemplated action.

328 B. Within 14 days of mailing the notice, the person named therein may file with the Clerk of the
329 Commission a written request for a hearing. If a hearing is requested, the Commission shall not issue a
330 cease and desist order except based upon findings made at the hearing. The hearing shall be conducted
331 in accordance with the Commission's Rules. The Commission may enforce compliance with any order
332 issued under this section by imposition and collection of such fines and penalties as may be prescribed
333 by law.

334 **§ 6.2-2616. Civil penalties.**

335 The Commission may impose a civil penalty not exceeding \$2,500 upon any person who it
336 determines, in proceedings commenced in accordance with the Commission's Rules, has violated any of
337 the provisions of this chapter or regulations adopted by the Commission pursuant thereto or violated
338 any other law or regulation applicable to conduct of the person's business. For the purposes of this
339 section, each separate violation shall be subject to the civil penalty prescribed in this section, and each
340 day that an unlicensed person engages in the business of a qualified education loan servicer shall
341 constitute a separate violation.

342 **§ 6.2-2617. Regulations.**

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

347 **§ 19.2-389. Dissemination of criminal history record information.**

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

350 1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for
351 purposes of the administration of criminal justice and the screening of an employment application or
352 review of employment by a criminal justice agency with respect to its own employees or applicants, and
353 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all
354 state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,
355 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For
356 purposes of this subdivision, criminal history record information includes information sent to the Central
357 Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time
358 or part-time employee of the State Police, a police department or sheriff's office that is a part of or
359 administered by the Commonwealth or any political subdivision thereof, and who is responsible for the
360 prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the
361 Commonwealth for the purposes of the administration of criminal justice;

362 2. Such other individuals and agencies that require criminal history record information to implement
363 a state or federal statute or executive order of the President of the United States or Governor that
364 expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such
365 conduct, except that information concerning the arrest of an individual may not be disseminated to a
366 noncriminal justice agency or individual if an interval of one year has elapsed from the date of the

367 arrest and no disposition of the charge has been recorded and no active prosecution of the charge is
368 pending;

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

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

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

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

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

388 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of
389 Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a
390 position of employment whenever, in the interest of public welfare or safety and as authorized in the
391 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person
392 with a conviction record would be compatible with the nature of the employment under consideration;

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

400 9. To the extent permitted by federal law or regulation, public service companies as defined in
401 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
402 personal contact with the public or when past criminal conduct of an applicant would be incompatible
403 with the nature of the employment under consideration;

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

406 11. A person requesting a copy of his own criminal history record information as defined in
407 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
408 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
409 America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any
410 affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board
411 member or any individual who has been offered membership on the board of a Crime Stoppers, Crime
412 Solvers or Crime Line program as defined in § 15.2-1713.1;

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

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

425 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law
426 (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of
427 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

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

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

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

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

440 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who
441 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,
442 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

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

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

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

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

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

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

465 26. Executive directors of community services boards or the personnel director serving the
466 community services board for the purpose of determining an individual's fitness for employment,
467 approval as a sponsored residential service provider, or permission to enter into a shared living
468 arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to
469 §§ 37.2-506 and 37.2-607;

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

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

477 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of
478 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the
479 purpose of determining if any applicant who accepts employment in any direct care position or requests
480 approval as a sponsored residential service provider or permission to enter into a shared living
481 arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted
482 of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with
483 mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and
484 37.2-607;

485 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants
486 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20
487 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

488 31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates
489 for the purpose of determining if any person being considered for election to any judgeship has been

convicted of a crime;

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

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

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

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

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

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

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

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

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

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

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

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

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

45. Other entities as otherwise provided by law.

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

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

B. Use of criminal history record information disseminated to noncriminal justice agencies under this

551 section shall be limited to the purposes for which it was given and may not be disseminated further.

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

554 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records
555 Exchange prior to dissemination of any criminal history record information on offenses required to be
556 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is
557 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases
558 where time is of the essence and the normal response time of the Exchange would exceed the necessary
559 time period. A criminal justice agency to whom a request has been made for the dissemination of
560 criminal history record information that is required to be reported to the Central Criminal Records
561 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.
562 Dissemination of information regarding offenses not required to be reported to the Exchange shall be
563 made by the criminal justice agency maintaining the record as required by § 15.2-1722.

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

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

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

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

582 I. Nothing in this section shall preclude the dissemination of a person's criminal history record
583 information pursuant to the rules of court for obtaining discovery or for review by the court.

584 **2. That the provisions of the first enactment of this act shall become effective on July 1, 2020.**

585 **3. That the State Corporation Commission (Commission) shall provide a report to members of the**
586 **House and Senate Committees on Commerce and Labor, the House Committee on Education, and**
587 **the Senate Committee on Education and Health on or before November 1, 2021, that contains the**
588 **following: (i) the number of licenses issued under Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2 of the**
589 **Code of Virginia, as created by this act (the Chapter); (ii) the number of applications for a license**
590 **under the Chapter that have been denied and the reasons for such denials; (iii) the number of**
591 **licensees under the Chapter that filed a written report with the Commission pursuant to**
592 **subsection A of § 6.2-2610 of the Chapter and for which any of the events enumerated in**
593 **subdivisions A 1 through 5 of § 6.2-2610 of the Chapter the written report was filed; (iv) the**
594 **number and nature of complaints received under the Chapter; and (v) the number of**
595 **investigations and examinations resulting from such complaints and the disposition of such**
596 **investigations and examinations.**

597 **4. That on or before March 1, 2020, the State Corporation Commission shall begin accepting**
598 **applications for licenses to be issued pursuant to Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2 of the**
599 **Code of Virginia, as created by this act, when such chapter becomes effective. Applications filed**
600 **with the Commission may be investigated prior to July 1, 2020, in accordance with § 6.2-2604 of**
601 **the Code of Virginia, as created by this act.**

602 **5. That nothing in this act shall prohibit any person from servicing an outstanding qualified**
603 **education loan that the person became responsible for servicing prior to July 1, 2020.**

604 **6. That the provisions of this act may result in a net increase in periods of imprisonment or**
605 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
606 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
607 **correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2018, Special Session I,**
608 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**
609 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
610 **appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile**
611 **Justice.**