

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H

D

HOUSE BILL 707
Committee Substitute Favorable 6/24/21
PROPOSED COMMITTEE SUBSTITUTE H707-PCS30455-BBf-11

Short Title: Student Borrowers' Bill of Rights.

(Public)

Sponsors:

Referred to:

April 29, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT A STUDENT BORROWERS' BILL OF RIGHTS, TO PROVIDE THAT
3 THE COMMISSIONER OF BANKS SHALL LICENSE AND REGULATE STUDENT
4 LOAN SERVICERS, AND TO ESTABLISH THE POSITION OF THE STUDENT LOAN
5 OMBUDSMAN.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.(a)** Chapter 53 of the General Statutes is amended by adding a new
8 Article to read:

9 "Article 26.

10 "Student Borrowers' Bill of Rights.

11 **"§ 53-440. Short title.**

12 This Article may be cited as the Student Borrowers' Bill of Rights.

13 **"§ 53-441. Purpose.**

14 This Article protects student loan borrowers and their families by providing that the
15 Commissioner of Banks shall license and regulate student loan servicers to ensure that student
16 loan borrowers and their families are treated fairly.

17 **"§ 53-442. Definitions.**

18 The following definitions apply in this Article:

19 (1) Borrower. – Any of the following:

20 a. An individual residing in this State who has received or agreed to pay
21 a student loan.

22 b. An individual who has received or agreed to pay a student loan to
23 attend an institution located in this State.

24 c. A person that shares responsibility to repay a student loan with an
25 individual described in sub-subdivision a. or b. of this subdivision.

26 (2) Commissioner. – The Commissioner of Banks.

27 (3) Consumer reporting agency. – As defined in 15 U.S.C. § 1681a(f).

28 (4) Control. – The power, directly or indirectly, to direct the management or
29 policy of an entity, whether through ownership of securities, by contract, or
30 otherwise. The following persons are presumed to control an entity:

31 a. A director, general partner, or executive officer of the entity.

32 b. A person that directly or indirectly has ownership of or the power to
33 vote ten percent (10%) or more of a class of outstanding voting
34 securities of the entity.

35 c. In the case of a limited liability company, a managing member.



* H 7 0 7 - P C S 3 0 4 5 5 - B B F - 1 1 *

- 1 d. In the case of a partnership, a person that has the right to receive upon
2 dissolution, or has contributed, ten percent (10%) or more of the
3 capital of the partnership.
- 4 (5) Nationwide Multistate Licensing System and Registry (NMLS). – The
5 licensing system developed and maintained by the Conference of State Bank
6 Supervisors and the American Association of Residential Mortgage
7 Regulators for the licensing of persons under this Article.
- 8 (6) Overpayment. – A payment on a student loan in excess of the amount due
9 from a borrower for a given period.
- 10 (7) Partial payment. – A payment on a student loan account that contains one or
11 more individual loans in an amount less than the amount necessary to satisfy
12 the outstanding payment due on all loans in the student loan account.
- 13 (8) Person. – An individual, partnership, limited liability company, limited
14 partnership, corporation, association, or other group engaged in joint business
15 activities however organized.
- 16 (9) Servicing. – Engaging in any of the following for compensation or gain:
17 a. Receiving any scheduled periodic payment on a student loan from a
18 borrower or any notification that a borrower made a scheduled
19 periodic payment on a student loan and applying a payment to the
20 balance of the student loan.
21 b. During a period when no payment is required on a student loan,
22 maintaining account records for the student loan and communicating
23 with the borrower regarding the student loan on behalf of the owner of
24 the student loan.
25 c. Having the right to receive payments from a borrower when the loan
26 is delinquent or in default.
- 27 (10) Student loan. – A loan or agreement that is extended to a borrower expressly
28 to finance postsecondary education expenses or other school-related expenses.
29 This term does not include the following:
30 a. Open-ended credit or any loan secured by real property.
31 b. Loans originated by entities exempted under G.S. 53-443(b), except
32 that loans are not excluded during periods in which they are serviced
33 by an entity not exempted under G.S. 53-443(b).
34 c. Loans serviced by entities exempted under G.S. 53-443(b).
- 35 (11) Student loan servicer. – Any person, regardless of location, responsible for
36 servicing a student loan.
- 37 (12) Written inquiry. – Any nonverbal communication in any format, whether
38 electronic or hard copy. A written inquiry does not include a communication
39 made to a consumer reporting agency involving a dispute under the Fair Debt
40 Collection Practices Act, 15 U.S.C. §§ 1692-1692p.

41 **"§ 53-443. License requirement for student loan servicers.**

42 (a) License Requirement. – No student loan servicer except those exempt under
43 subsection (b) of this section shall service a student loan unless the person has a student loan
44 servicer license as provided in this Article.

45 (b) Exemptions. – The following are exempt from all provisions of this Article:

- 46 (1) A bank, savings bank, credit union, or savings and loan association organized
47 under the laws of any state or the United States.
48 (2) A wholly owned subsidiary of an entity described in subdivision (1) of this
49 subsection.
50 (3) The State or any political subdivision of the State.
51 (4) Institutions of higher education, as defined in G.S. 116-143.1.

- 1 (5) College Foundation, Inc.
2 (6) Eligible private postsecondary institutions, as defined in G.S. 116-280.
3 (7) Organizations, as defined in IRC Sec. 509(a)(1), (2), or (3), that support the
4 work of institutions of higher education and eligible private postsecondary
5 institutions exempted by this subsection.

6 **"§ 53-444. License application.**

7 (a) Application. – Applications under this Article shall be filed through the Nationwide
8 Multistate Licensing System and Registry (NMLS) in a form acceptable to the Commissioner.
9 To be considered complete, the application shall be verified by attestation of the applicant or a
10 designee of the applicant and shall include all of the following:

- 11 (1) The applicant's legal name, along with any assumed business name, principal
12 address, including street address and mailing address, contact information,
13 and social security number or taxpayer identification number.
14 (2) The applicant's form and place of organization, if applicable.
15 (3) A certificate of good standing from the state in which the applicant was
16 organized, if applicable.
17 (4) A certificate of authority from the North Carolina Secretary of State to
18 conduct business in this State, if required by Article 15 of Chapter 55 of the
19 General Statutes, or other evidence of the applicant's registration or
20 qualification to do business in this State.
21 (5) The qualifications and business history of the applicant and, if applicable, the
22 business history of any person controlling the applicant, including a
23 description of any injunction or administrative order by any state or federal
24 authority to which the person is or has been subject.
25 (6) The applicant's financial condition, including its credit history, business
26 history, and most recent audited annual financial statement or, if the applicant
27 is a wholly owned subsidiary, the most recent audited annual financial
28 statement of the applicant's parent entity. This statement shall include the
29 balance sheet, statement of income or loss, statement of changes in
30 shareholder equity, if applicable, and statement of changes in financial
31 position.
32 (7) A record of any criminal convictions for the applicant or, in the case of an
33 applicant that is an entity, each individual who has control of the applicant for
34 a 10-year period prior to the date of the application, including the applicant's
35 consent to a federal and State criminal background check and a set of the
36 applicant's fingerprints in a form acceptable to the Commissioner. In the case
37 of an applicant that is an entity, each individual who has control over the
38 applicant shall consent to a federal and State criminal background check and
39 shall submit a set of the individual's fingerprints.
40 (8) A current schedule of the ranges and categories of the fees it charges
41 borrowers for servicing student loans.
42 (9) Any additional information that the Commissioner deems relevant.

43 (b) Fees. – An applicant shall include a nonrefundable application fee of one thousand
44 five hundred dollars (\$1,500) with the application. In addition, every applicant for initial
45 licensure shall pay the actual cost of obtaining a credit report and federal and State criminal
46 background checks and the processing fees required by the NMLS.

47 (c) Investigation. – On receipt of the application and fees, the Commissioner shall
48 investigate the applicant's financial condition and responsibility, financial and business
49 experience, and character and general fitness.

50 (d) Abandoned Application. – The Commissioner may deem an application abandoned if
51 the applicant fails to respond to a written request for information by the Commissioner within 30

1 days of the date of the request. The written request may be given to the applicant through the
2 NMLS or by other electronic means.

3 (e) Issuance of License. – The Commissioner shall issue a student loan servicer license
4 to an applicant if the Commissioner finds all of the following:

5 (1) The applicant has satisfied the requirements imposed by this Article.

6 (2) The applicant's business will be conducted honestly, fairly, and in a manner
7 commanding the confidence and trust of the community.

8 (3) The applicant has demonstrated net worth necessary to satisfy the
9 requirements of G.S. 53-445.

10 (4) The applicant has obtained a surety bond in conformance with G.S. 53-446.

11 (5) Persons controlling the applicant, as a group, have degrees of character,
12 competence, and experience that command the confidence and trust of the
13 community and justify the belief that the applicant will operate safely,
14 soundly, and in compliance with the law.

15 (6) The applicant meets other similar requirements determined by the
16 Commissioner.

17 (f) Automatic Issuance of License for Federal Student Loan Servicing Contractors. – A
18 person seeking to act within this State as a student loan servicer is exempt from the procedures
19 described in subsections (a) through (d) of this section upon a determination by the Commissioner
20 that the person is a party to a contract awarded by the United States Secretary of Education under
21 20 U.S.C. § 1087f. Any person seeking this exemption shall submit a written request for
22 verification of exemption to the Commissioner. The request shall be in a form acceptable to the
23 Commissioner and shall include a copy of any written agreement and related documentation that
24 is the basis for the exemption. The following provisions apply to the exemption:

25 (1) Actions by Commissioner. – With regard to a person deemed exempt under
26 this subsection, the Commissioner shall do all of the following:

27 a. Automatically issue a license upon payment of the fees required by
28 subsection (b) of this section.

29 b. Automatically issue a renewal license upon payment of the assessment
30 required by G.S. 53-448.

31 (2) Notice. – A person issued a license pursuant to this subsection shall provide
32 the Commissioner with written notice within seven days after notification of
33 the expiration, revocation, or termination of any contract awarded by the
34 United States Secretary of Education under 20 U.S.C. § 1087f. The person has
35 30 days after notification to satisfy all requirements established under
36 subsections (a) and (b) of this section in order to continue to act within this
37 State as a student loan servicer. At the expiration of the 30-day period, if the
38 person seeking to act within this State as a student loan servicer has not
39 satisfied the requirements of subsections (a) and (b) of this section, the
40 Commissioner shall summarily suspend any license granted to the person
41 under this section.

42 (3) Preservation of authorities. – With respect to student loan servicing not
43 conducted pursuant to a contract awarded by the United States Secretary of
44 Education under 20 U.S.C. § 1087f, nothing in this section prevents the
45 Commissioner from issuing, or filing a civil action for, an order to temporarily
46 or permanently enjoin a person from acting as a student loan servicer or from
47 violating this Article.

48 **"§ 53-445. Minimum net worth.**

49 (a) An applicant shall possess and a licensee shall maintain at all times a net worth of not
50 less than two hundred fifty thousand dollars (\$250,000) calculated in accordance with generally
51 accepted accounting principles.

1 **(b)** The Commissioner may by order increase the amount of net worth required of an
2 applicant or licensee if the Commissioner determines additional net worth is necessary to ensure
3 safe and sound operation based on consideration of the following factors:

- 4 **(1)** The nature and volume of the projected or established business.
5 **(2)** The amount, nature, quality, and liquidity of assets.
6 **(3)** The amount and nature of liabilities.
7 **(4)** The history of operations and prospects for earning and retaining income.
8 **(5)** The quality of operations and management.
9 **(6)** The nature and quality of control persons.
10 **(7)** The history of compliance with State and federal law.
11 **(8)** Any other factors the Commissioner deems relevant.

12 **"§ 53-446. Surety bond.**

13 **(a)** Applicants shall be required to post a surety bond with the Commissioner at
14 application, and licensees shall maintain a surety bond in the amount of one hundred fifty
15 thousand dollars (\$150,000). If a servicer, however, has servicing volume in this State in a
16 calendar year in excess of ten million dollars (\$10,000,000) but less than fifty million dollars
17 (\$50,000,000), then the servicer's minimum bond amount shall be two hundred fifty thousand
18 dollars (\$250,000), and if a servicer has servicing volume in this State in a calendar year of fifty
19 million dollars (\$50,000,000) or more, then the servicer's minimum bond shall be five hundred
20 thousand dollars (\$500,000).

21 **(b)** The surety bond shall be in a form satisfactory to the Commissioner and shall run to
22 the State for the benefit of any claimants against the licensee to secure the faithful performance
23 of the obligations of the licensee. The Commissioner has the discretion to require the applicant
24 to obtain additional insurance coverage to address related cybersecurity risks inherent in the
25 applicant's business model as it relates to student loan servicing to the extent those risks are not
26 within the scope of the surety bond.

27 **(c)** The aggregate liability of the surety in no event shall exceed the principal sum of the
28 bond. Claimants against the licensee may themselves bring suit directly on the surety bond, or
29 the Commissioner may bring suit on behalf of the claimants, either in one action or in successive
30 actions. Borrower claims shall be given priority in recovering from the bond. When an action is
31 commenced on a licensee's bond, the Commissioner may require the posting of a new bond; in
32 this case, the licensee shall post a replacement bond in the required amount within 30 days.
33 Immediately upon recovery upon any action on the bond, the licensee shall post a new bond.

34 **(d)** The surety bond shall remain in effect until cancellation, which may occur only after
35 90 days' written notice to the Commissioner. Cancellation shall not affect any liability incurred
36 during that period.

37 **(e)** The surety bond shall remain in place for no less than five years after the licensee
38 ceases student loan servicing operations in this State. The Commissioner, however, may permit
39 the surety bond to be reduced or eliminated if the Commissioner determines that the reduction or
40 elimination will not harm borrowers or this State.

41 **(f)** The surety bond proceeds and any cash or other collateral posted as security by a
42 licensee is deemed to be held in trust for the benefit of any claimants against the licensee and for
43 the benefit of the State in the event of the licensee's bankruptcy.

44 **"§ 53-447. License renewal, expiration, and cancellation; no assignability; acquisition of**
45 **licensee.**

46 **(a)** Renewal. – A license under this Article shall be renewed annually. A licensee shall
47 apply to renew a license by submitting an application to the Commissioner through the NMLS
48 on or after July 1 of each year. The renewal applicant shall continue to meet the requirements for
49 initial licensure as provided in G.S. 53-444 but is not required to pay the fees described in
50 subsection (b) of that section.

1 **(b) Expiration.** – A license under this Article expires annually on September 30 unless it
2 is renewed under subsection (a) of this section.

3 **(c) Reinstatement.** – If a licensee has not renewed prior to the expiration date, then the
4 licensee shall pay two hundred fifty dollars (\$250.00) as a nonrefundable late fee to reinstate the
5 license. In the event the licensee fails to obtain a reinstatement of the license prior to October 31,
6 the Commissioner shall require the licensee to comply with the requirements for initial licensure
7 as provided in G.S. 53-444, including the fees described in subsection (b) of that section.

8 **(d) Cessation of Operations.** – To cease student loan servicing operations in this State, a
9 licensee shall first obtain the approval of the Commissioner. To obtain this approval, the licensee
10 shall provide written notice to the Commissioner of the location of the licensee's records and the
11 name, address, and telephone number of an individual authorized to provide access to the records.
12 The licensee shall provide written notice at least 60 days prior to the cessation of operation.

13 If the Commissioner determines that the licensee's cessation of operations will not harm
14 borrowers or this State, the Commissioner may order the cancellation of the license. The
15 cancellation of a license under this subsection does not reduce or eliminate any civil or criminal
16 liability of a licensee arising from acts or omissions occurring before the cancellation.

17 **(e) Assignability.** – A license issued under this Article is not assignable.

18 **(f) Acquisition of Licensee.** – Control of a licensee shall not be acquired through a stock
19 purchase, merger, or other device without prior written consent of the Commissioner. The
20 Commissioner shall not give consent if the Commissioner finds that any of the grounds for denial,
21 revocation, or suspension as set forth under G.S. 53-455 apply to the acquiring person.

22 **"§ 53-448. Assessments.**

23 **(a) Annual Assessments.** – For purposes of meeting the cost of regulation under this
24 Article, each licensee shall pay to the Commissioner an annual assessment in the amount of one
25 dollar (\$1.00) per borrower served by the licensee. The annual assessment shall be based on the
26 number of borrowers reported by the licensee pursuant to G.S. 53-449(b). The Commissioner
27 may collect the assessment annually or in periodic installments. All assessments for the prior
28 year shall be paid before a licensee may renew its license.

29 **(b) Special Assessments.** – If the Commissioner determines that the financial condition
30 or manner of operation of a licensee warrants further examination or an increased level of
31 supervision, the Commissioner may charge, and the licensee shall pay, a special assessment equal
32 to the reasonable cost of further examination or increased level of supervision. The
33 Commissioner's determination of this cost is, in the absence of manifest error, dispositive of the
34 issue of reasonableness.

35 **"§ 53-449. Duties of licensee to the Commissioner.**

36 **(a) Notice of Material Event.** –

37 **(1)** Within 20 days of a change or acquisition of control of a licensee, the licensee
38 shall provide notice of the event to the Commissioner through the NMLS in
39 writing and in a form prescribed by the Commissioner. The notice shall be
40 accompanied by any information, data, and records required by the
41 Commissioner.

42 **(2)** Within 20 days of the occurrence of any one of the following events, a licensee
43 shall file a written report with the Commissioner through the NMLS
44 describing the event and its expected impact on the licensee's activities in this
45 State:

46 **a.** The filing for bankruptcy or reorganization by the licensee.

47 **b.** The institution of revocation or suspension proceedings against the
48 licensee by any State or governmental agency.

49 **c.** Any felony indictment of the licensee or any control person related to
50 student loan servicing activities.

1 d. Any felony conviction of the licensee or any control person related to
2 student loan servicing activities.

3 (3) If the information contained in any document filed with the Commissioner or
4 the NMLS is or becomes inaccurate or incomplete in any material respect, the
5 licensee or applicant shall within 30 days file a correcting amendment to the
6 information contained in the document.

7 (b) Annual Report on Student Loans. – No later than 90 days after the end of the calendar
8 year, a licensee shall file an annual report in a form prescribed by the Commissioner through the
9 NMLS. The report shall include all of the following relating to student loans serviced by the
10 licensee on behalf of borrowers in this State:

11 (1) The number of borrowers, number of student loans, and total outstanding
12 balance.

13 (2) With respect to student loans enrolled in any type of income-driven repayment
14 plan, the number of borrowers, number of student loans, and total outstanding
15 balance.

16 (3) The types of student loans, such as federal, private, Federal Family Education
17 Loan (FFEL), Parent Plus, Perkins, and institutional loans, and the number of
18 student loans for each type.

19 (4) The number of student loans in default, along with a breakdown of the total
20 number of student loans 30 to 90 days delinquent, 91 to 180 days delinquent,
21 and 181 to 270 days delinquent.

22 (5) Any other information deemed relevant by the Commissioner.

23 **§ 53-450. Duties of student loan servicer to borrowers.**

24 (a) A student loan servicer shall respond to a written inquiry from a borrower or the
25 representative of a borrower within 10 days of receipt of the request and, within 30 days after the
26 receipt of the request, provide information relating to the request and, if applicable, the action
27 the student loan servicer will take to correct the borrower's account or an explanation for why the
28 student loan servicer believes the account is correct.

29 (b) The 30-day period in subsection (a) of this section may be extended for not more than
30 15 days, if, before the end of the 30-day period, the student loan servicer notifies the borrower or
31 the borrower's representative of the extension and the reason for the delay.

32 (c) Except when required by 15 U.S.C. § 1692e(8) to communicate that a debt is disputed,
33 a student loan servicer shall not furnish to a consumer reporting agency information regarding a
34 payment that is the subject of a written inquiry related to a dispute on a borrower's payment on a
35 student loan during the 60 days following receipt of the written inquiry. A student loan servicer,
36 however, may furnish to a consumer reporting agency information regarding the disputed
37 payment after this period of time, even if the borrower submits an additional written inquiry.

38 (d) Except as provided in federal law or required by a student loan agreement, a student
39 loan servicer shall inquire of a borrower how to apply an overpayment to a student loan. A
40 borrower's direction on how to apply an overpayment to a student loan stays in effect for any
41 future overpayments during the term of the loan until the borrower provides different directions.

42 (e) A student loan servicer shall apply partial payments in a manner that minimizes late
43 fees and negative credit reporting. Where loans on a borrower's student loan account have an
44 equal level of delinquency, a student loan servicer shall apply partial payments to satisfy as many
45 individual loan payments as possible on the borrower's account.

46 (f) In the event of the sale, assignment, or other transfer of the servicing of a student loan
47 that results in a change in the identity of the person to whom a borrower is required to send
48 payments or direct any communication concerning the loan, the following provisions apply:

49 (1) The new student loan servicer shall honor all benefits originally represented
50 as available during repayment, including those for which the borrower has not
51 yet qualified.

- 1 (2) The old student loan servicer shall transfer all records of the borrower to the
2 new student loan servicer within 45 days of the sale, assignment, or transfer.
3 (3) The new student loan servicer shall provide notice to the borrower of the sale,
4 assignment, or transfer at least seven days before the first payment is due to
5 the new student loan servicer. The notice shall include the identity of the new
6 student loan servicer, the effective date of the sale, assignment, or transfer, the
7 date the old student loan servicer will no longer accept payments, and the
8 contact information for the new student loan servicer.

9 (g) Except as otherwise provided in federal law, federal student loan agreements, or a
10 contract between the federal government and a student loan servicer, a student loan servicer shall
11 properly evaluate a borrower for an income-based repayment program, public service loan
12 forgiveness program, or other repayment program before placing the borrower in forbearance or
13 default if one or more of these programs is available to the borrower.

14 **"§ 53-451. Prohibited conduct.**

15 In addition to the activities prohibited under other provisions of this Article, it is unlawful for
16 any student loan servicer to do any of the following:

- 17 (1) Directly or indirectly employ a scheme, device, or artifice to defraud or
18 mislead borrowers or the Commissioner.
19 (2) Engage in an unfair or deceptive trade practice toward any person or
20 misrepresent or omit any material information in connection with the
21 servicing of a student loan, including the amount, nature, or terms of any fee
22 or payment due or claimed to be due on a student loan, the terms and
23 conditions of the loan agreement, or the borrower's obligation under the
24 student loan.
25 (3) Obtain property by fraud or misrepresentation.
26 (4) Misapply payments to the outstanding balance of a student loan.
27 (5) Provide inaccurate information to a consumer reporting agency.
28 (6) Fail to report both the favorable and unfavorable payment history of a
29 borrower to a consumer reporting agency at least annually if the student loan
30 servicer regularly reports information to a consumer reporting agency.
31 (7) Refuse to communicate with an authorized representative of a borrower who
32 provides any written authorization signed by the borrower. The student loan
33 servicer, however, may adopt procedures reasonably related to verifying that
34 the representative is in fact authorized to act on behalf of the borrower. For
35 purposes of this subdivision, a borrower who has submitted a complaint to any
36 State agency is deemed to have authorized the student loan servicer to
37 communicate directly with the State agency about the borrower's student loan.
38 (8) Fail to respond to a communication from any State agency within 20 days or
39 within a shorter reasonable period of time if requested by the State agency.
40 (9) Fail to respond within 20 days to a complaint submitted to the student loan
41 servicer by the Commissioner or Student Loan Ombudsman. If necessary, the
42 student loan servicer may request additional time to respond to the complaint,
43 up to a maximum of 45 days, so long as the request is accompanied by an
44 explanation for why additional time is reasonable and necessary.
45 (10) Make any false statement or omit any material fact in connection with
46 information or reports filed with a governmental agency or in connection with
47 an investigation or examination conducted by the Commissioner.
48 (11) Communicate with a borrower in any manner designed to harass or intimidate
49 the borrower.
50 (12) Violate State or federal privacy laws.

51 **"§ 53-452. Commissioner's authority to investigate and examine.**

- 1 (a) For purposes of carrying out this Article, the Commissioner may access any
2 documents or information, including all of the following:
- 3 (1) Criminal, civil, and administrative history information, including data
4 unrelated to a conviction.
- 5 (2) Personal history and experience information, including independent credit
6 reports obtained from a consumer reporting agency.
- 7 (3) Any other documents, information, or evidence the Commissioner deems
8 relevant to the inquiry, investigation, or examination regardless of the
9 location, possession, control, or custody of the documents or information.
- 10 (b) The Commissioner may investigate or examine any student loan servicer as often as
11 necessary to carry out the purposes of this Article. The Commissioner may interview borrowers,
12 as well as the student loan servicer's controlling persons, employees, independent contractors,
13 and agents. The Commissioner may order the attendance of and examine under oath all persons
14 whose testimony about the student loan servicing activity the Commissioner deems relevant. The
15 Commissioner may also order the student loan servicer to produce documents or information the
16 Commissioner deems relevant. Any investigation or examination that, in the opinion of the
17 Commissioner, requires extraordinary review, investigation, or examination is subject to the
18 actual costs of additional expenses and the hourly rate for the Office of the Commissioner of
19 Banks' staff's time, to be determined annually by the State Banking Commission.
- 20 (c) Upon request, each student loan servicer shall make available in a location that is
21 acceptable to the Commissioner the records relating to the operations of the student loan servicer.
22 No person shall knowingly withhold, remove, secrete, mutilate, or destroy any records or
23 information. The Commissioner may control access to the records by moving them to another
24 location or placing a person in exclusive charge of them where they are usually kept. During this
25 period of control, no person shall remove any records or information except pursuant to a court
26 order or with the consent of the Commissioner. Unless the Commissioner has a reason to believe
27 the records are at risk of being withheld, removed, secreted, mutilated, or destroyed, the student
28 loan servicer shall have access to them.
- 29 (d) Each student loan servicer shall make or compile reports as directed by the
30 Commissioner to carry out the purposes of this section, including any of the following:
- 31 (1) Accounting compilations.
- 32 (2) Information lists and data concerning student loan servicing activities in a
33 format prescribed by the Commissioner.
- 34 (3) Periodic reports, including any of the following:
- 35 a. Annual report questionnaires.
- 36 b. Any report required by the NMLS.
- 37 (e) To carry out the purposes of this section, the Commissioner may do any of the
38 following:
- 39 (1) Retain attorneys, accountants, or other professionals and specialists as
40 examiners, auditors, or investigators to assist with the investigation or
41 examination.
- 42 (2) Enter into agreements or relationships with other governmental agencies or
43 regulatory associations to improve efficiencies and reduce the regulatory
44 burden by sharing resources, standardized or uniform methods or procedures,
45 or documents or information obtained under this section.
- 46 (3) Use, hire, contract, or employ publicly or privately available analytical
47 systems, methods, or software.
- 48 (4) Accept and rely on investigation and examination reports made by other
49 governmental agencies.

1 (5) Accept an audit report made by an independent certified public accountant
2 and incorporate the audit report in the report of the investigation or
3 examination or other writing of the Commissioner.

4 (f) The Commissioner may take any action described in G.S. 53-455 or G.S. 53-456,
5 including summary suspension of the license, if a student loan servicer fails within 20 days, or a
6 lesser time if requested for good cause, to do any of the following:

7 (1) Respond to inquiries from the Commissioner regarding any complaint filed
8 against the student loan servicer that appears to involve a violation of this
9 Article or any rule adopted or order issued under this Article.

10 (2) Respond to and cooperate fully with notices from the Commissioner relating
11 to the scheduling and conducting of an investigation or examination.

12 (3) Consent to a criminal history record check. The refusal constitutes grounds
13 for the Commissioner to deny licensure to the applicant as well as any person
14 controlled by the applicant.

15 **"§ 53-453. Confidentiality.**

16 (a) All information obtained by the Commissioner under this Article is subject to
17 confidential treatment as provided in G.S. 53C-2-7.

18 (b) Notwithstanding any State law to the contrary, the Commissioner shall report
19 enforcement actions under this Article and any other relevant information to the NMLS.

20 (c) The Commissioner may enter into written agreements with other governmental
21 agencies, the Conference of State Bank Supervisors, or other associations representing
22 governmental agencies and may share otherwise confidential information pursuant to these
23 agreements.

24 (d) The requirements of G.S. 53C-2-7 regarding the privacy or confidentiality of any
25 information provided under subsections (b) and (c) of this section, and any privilege arising under
26 any other federal or State law with respect to the information, continues to apply to the
27 information after it has been disclosed to an entity described in subsection (b) or (c) of this
28 section. Information held by the entity is not subject to disclosure under any State law governing
29 the disclosure to the public of information held by an officer or agency of the State. The entities
30 described in subsection (b) or (c) of this section may share information with all State and federal
31 regulatory officials with student loan industry oversight authority without the loss of privilege or
32 the loss of confidentiality protections provided by State and federal law.

33 (e) Nothing in this section prohibits the Commissioner from releasing to the public a list
34 of persons licensed under this Article or aggregated financial data on these licensees.

35 **"§ 53-454. Regulatory authority.**

36 (a) Unless otherwise provided, all actions, hearings, and procedures under this Article
37 are governed by Article 3A of Chapter 150B of the General Statutes.

38 (b) Upon the issuance of any summary order permitted under this Article, including
39 summary suspensions and cease and desist orders, the Commissioner shall promptly notify the
40 licensee that the order has been entered and the reasons for the order. Within 20 days of receiving
41 notice of the order, the licensee may request in writing a hearing before the Commissioner. The
42 Commissioner shall schedule a hearing within 15 days of receiving the request. If the licensee
43 does not request a hearing, the order remains in effect unless it is modified or vacated by the
44 Commissioner.

45 **"§ 53-455. Disciplinary action.**

46 (a) The Commissioner may, by order, deny, suspend, revoke, or refuse to renew a license
47 under this Article or may restrict the manner in which a licensee or a controlling person of a
48 licensee engages in student loan servicing, if the Commissioner finds all of the following:

49 (1) The order is in the public interest.

50 (2) The licensee or a controlling person of the licensee has done or is subject to
51 any of the following:

- 1 a. Submitted an application for licensure, report, or other document to
2 the Commissioner that, as of its effective date or later, contained a
3 statement that, in light of the circumstances under which it was made,
4 is false or misleading with respect to a material fact.
5 b. Violated any provision of this Article or rule adopted or order issued
6 under this Article.
7 c. Is permanently or temporarily enjoined by a court from engaging in
8 student loan servicing.
9 d. Is the subject of an order entered within the past five years by any
10 governmental agency with jurisdiction over the student loan servicing
11 industry.

12 (b) If the Commissioner has reason to believe that a licensee has violated any provision
13 of this Article or rule adopted or order issued under this Article, the Commissioner may take any
14 of the following actions:

- 15 (1) Summarily order the licensee to cease and desist from any harmful activities
16 or violations of this Article.
17 (2) Summarily suspend the license of the licensee.

18 This subsection supplements the Commissioner's authority under G.S. 150B-3(c).

19 (c) If a licensee is accused of any act or omission that would subject the licensee to
20 disciplinary action under this section, the licensee, with the approval of the Commissioner, may
21 surrender the license and all the rights and privileges pertaining to it. A person who surrenders a
22 license is not eligible for licensure under this Article during any period specified by the
23 Commissioner.

24 **"§ 53-456. Civil penalty; restitution; disgorgement; authority to prohibit certain conduct.**

25 (a) Civil Penalty. – The Commissioner may assess a civil penalty against a student loan
26 servicer not to exceed twenty-five thousand dollars (\$25,000) for each violation of this Article,
27 rules adopted under this Article, or order of the Commissioner issued under this Article. The
28 clear proceeds of civil penalties imposed pursuant to this section shall be remitted to the Civil
29 Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

30 (b) Restitution. – If a student loan servicer violates this Article or rule adopted or order
31 issued under this Article, the Commissioner may order the student loan servicer to pay restitution
32 to a borrower injured by the violation.

33 (c) Disgorgement. – The Commissioner may require a student loan servicer to disgorge
34 and pay to the borrower or other person any amount received by the student loan servicer
35 collected in violation of Chapter 24 of the General Statutes.

36 (d) Authority to Prohibit. – The Commissioner may prohibit a student loan servicer from
37 engaging in acts or practices in connection with student loan servicing that the Commissioner
38 finds to be unfair, deceptive, designed to evade the laws of this State, or not in the best interest
39 of the borrowing public.

40 **"§ 53-457. Civil remedy.**

41 (a) A borrower may bring a civil action for damages against a student loan servicer for
42 an injury caused by the student loan servicer's violation of this Article or rule adopted or order
43 issued under this Article. If the violation occurs in connection with the sale, assignment, or other
44 transfer of the servicing between two student loan servicers, the student loan servicers remain
45 jointly and severally liable for the injury.

46 (b) A violation of this Article or rule adopted or order issued under this Article is an
47 unfair or deceptive trade practice for purposes of Chapter 75 of the General Statutes. Nothing in
48 this Article shall be construed to limit any claims otherwise arising under G.S. 75-1.1.

49 **"§ 53-458. Service of process.**

50 (a) A licensee under this Article is deemed to have done all of the following:

1 (1) Consented to the jurisdiction of the courts of this State for an action arising
2 under this Article.

3 (2) Appointed the Secretary of State as the licensee's agent for the purpose of
4 accepting service of process in an action arising under this Article.

5 (b) The Commissioner is deemed to have complied with the requirement of law
6 concerning service of process upon mailing by certified mail notice to a licensee, postage prepaid
7 and addressed to the last known address on file with the Commissioner.

8 **"§ 53-459. Rules; appeal by aggrieved person.**

9 (a) The Commissioner may adopt any rule that the Commissioner deems necessary to
10 carry out the provisions of this Article.

11 (b) Pursuant to G.S. 53C-2-6(b), any person aggrieved by any rule adopted or order
12 issued by the Commissioner may appeal to the State Banking Commission for review upon
13 providing a written notice of appeal within 20 days after the rule was adopted or order was issued.
14 The notice of appeal shall specifically state the grounds for appeal and, in the case of an appeal
15 from a contested case proceeding before the Commissioner, shall set forth in numbered order the
16 assignments of error for review by the State Banking Commission. Failure to specify the
17 assignments of error or failure to comply with the briefing schedule provided by the State
18 Banking Commission constitutes grounds to dismiss the appeal. Any party aggrieved by a
19 decision of the State Banking Commission may petition for judicial review pursuant to
20 G.S. 53C-2-6(b).

21 **"§ 53-460. Commissioner's participation in nationwide registry.**

22 A student loan servicer shall be licensed through the NMLS. In order to carry out this
23 requirement, the Commissioner may participate in the NMLS. G.S. 53-244.119 applies to this
24 section."

25 **SECTION 1.(b)** This section becomes effective June 1, 2022.

26 **SECTION 2.(a)** Article 26 of Chapter 53 of the General Statutes, as enacted by this
27 act, is amended by adding the following new sections to read:

28 **"§ 53-461. Student Loan Ombudsman.**

29 The Commissioner of Banks shall designate a Student Loan Ombudsman to carry out the
30 duties and activities set forth in this Article. The Ombudsman shall provide timely assistance to
31 any borrower of a student loan in this State.

32 **"§ 53-462. Duties of the Ombudsman; education course; reports.**

33 (a) The Commissioner of Banks shall ensure that the Ombudsman does all of the
34 following:

35 (1) Receives, reviews, and responds to any complaint from a student loan
36 borrower.

37 (2) Provides copies of complaints to the Attorney General, subject to
38 G.S. 53C-2-7.

39 (3) Compiles and analyzes data on student loan borrower complaints.

40 (4) Monitors and analyzes the development and implementation of federal, State,
41 and local laws and policies relating to student loan borrowers and recommends
42 any necessary changes to these laws and policies.

43 (5) Disseminates information concerning the Ombudsman's duties and the
44 regulatory duties of the Commissioner of Banks to institutions of higher
45 education, student loan servicers, and any other appropriate persons.

46 (6) Takes any other action necessary to fulfill the duties set forth in this section.

47 (b) No later than July 1, 2023, the Office of the Commissioner of Banks, in coordination
48 with the State Education Assistance Authority, shall ensure that the Ombudsman establishes and
49 maintains a student loan borrower education course that includes educational presentations and
50 materials regarding student loans. The program shall include key loan terms, documentation

1 requirements, monthly payment obligations, income-based repayment options, the availability of
2 State and federal loan forgiveness programs, and disclosure requirements.

3 (c) No later than 12 months following the date of appointment of the Ombudsman and
4 annually thereafter, the Ombudsman shall submit a report to the General Assembly regarding all
5 of the following:

6 (1) The implementation of this section, including data collected and analyzed.

7 (2) The overall effectiveness of the Ombudsman position.

8 (3) The efficacy of the student loan borrower education course in making student
9 borrowers aware of their rights and responsibilities and the resources available
10 to them."

11 **SECTION 2.(b)** This section becomes effective January 1, 2023.

12 **SECTION 3.** If any provision of this act or its application to any person or
13 circumstance is held invalid, the invalidity does not affect other provisions or applications of this
14 act that can be given effect without the invalid provision or application and, to this end, the
15 provisions of this act are severable.

16 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
17 law.