

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL DRH10523-MUfa-29

Short Title: Student Borrowers' Bill of Rights. (Public)

Sponsors: Representatives Everitt and Batch (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT A STUDENT BORROWERS' BILL OF RIGHTS BY ESTABLISHING
3 THE POSITION OF A STUDENT LOAN OMBUDSMAN IN THE OFFICE OF THE
4 COMMISSIONER OF BANKS AND BY PROVIDING THAT THE COMMISSIONER OF
5 BANKS SHALL LICENSE AND REGULATE STUDENT LOAN SERVICERS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Chapter 53 of the General Statutes is amended by adding a new Article
8 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 (i) by establishing the position
15 of a Student Loan Ombudsman to ensure that student loan borrowers and their families have
16 accurate information about student loans and repayment options and (ii) by providing that the
17 Commissioner of Banks shall license and regulate student loan servicers to ensure that student
18 loan borrowers and their families are treated fairly.

19 **"§ 53-442. Definitions.**

20 The following definitions apply in this Article:

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

22 a. A resident of this State who has received or agreed to pay a student
23 loan.

24 b. A person who shares responsibility to repay a student loan with a
25 person described in sub-subdivision a. of this subdivision.

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

27 (3) Controlling person. – As defined in G.S. 53-208.42.

28 (4) Servicing. – Any of the following:

29 a. Performing all of the following:

30 1. Receiving any scheduled periodic payment on a student loan
31 from a borrower or any notification that a borrower made a
32 scheduled periodic payment on a student loan.

33 2. Applying the payment to the balance of the student loan
34 according to the terms of the student loan.

35 b. During a period when no payment is required on a student loan,
36 performing all of the following:



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1. Maintaining account records for the student loan.
2. Communicating with the borrower regarding the student loan on behalf of the owner of the student loan.

(5) Student loan. – A loan made to a borrower to assist a student in attaining an education beyond the high school level. This term includes a loan made to refinance a student loan or made to consolidate a student loan with another loan.

(6) Student loan servicer. – Any person, regardless of location, responsible for servicing a student loan.

"§ 53-443. Student Loan Ombudsman.

(a) General Duties. – There is established in the Office of the Commissioner of Banks the position of the Student Loan Ombudsman. The Student Loan Ombudsman, in consultation with the Commissioner, shall do all of the following:

(1) Receive, review, and attempt to resolve complaints from borrowers. The Ombudsman may collaborate with institutions of higher education, student loan servicers, and other participants in student loan lending, including The University of North Carolina and its constituent institutions and the State Education Assistance Authority.

(2) Compile and analyze data of complaints from borrowers.

(3) Assist borrowers in understanding their rights and responsibilities under the terms of student loans, including any income-based repayment options and any loan deferral or forgiveness options.

(4) Provide information to the public, State agencies, and the North Carolina General Assembly about borrowers' problems and concerns and make recommendations for resolving these problems and concerns.

(5) Analyze and monitor the development and implementation of federal, State, and local laws and policies concerning borrowers and recommend necessary changes.

(6) Review the loan history of borrowers who give written consent.

(7) Disseminate information about his or her availability to assist those with concerns about servicing, such as borrowers, potential borrowers, institutions of higher education, and student loan servicers.

(8) Take any other actions necessary to fulfill his or her duties.

(b) Student Loan Borrower Education Course. – The Student Loan Ombudsman, in consultation with the Commissioner, shall prepare a student loan borrower education course by January 1, 2021. The course shall include educational presentations and material about student loans and shall cover key loan terms, documentation requirements, monthly payment obligations, income-based repayment options, loan deferral and forgiveness options, and disclosure requirements. The Ombudsman shall make the course available to students in high schools and institutions of higher education and to any borrower that requests it. The Ombudsman shall periodically update the course.

"§ 53-444. License requirement for student loan servicers.

(a) License Requirement. – No person except those exempt under subsection (b) of this section shall service a student loan unless the person has a student loan servicer license as provided in this Article. A licensee may conduct its business at one or more locations in this State pursuant to a single license.

(b) Exemptions. – This Article does not apply to any of the following:

(1) A bank, savings bank, credit union, or savings and loan association organized under the laws of any state or the United States.

(2) A wholly owned subsidiary of an entity described in subdivision (1) of this subsection.

- 1 (3) The United States or any department, agency, or instrumentality of the United
2 States.
- 3 (4) A person that services student loans pursuant to a contract with the United
4 States Department of Education.
- 5 (5) The State or any political subdivision of the State.

6 **"§ 53-445. License application.**

7 (a) Application. – A person may apply for a student loan servicer license by submitting
8 a written application to the Commissioner. The application shall be verified by oath or
9 affirmation of the applicant or a designee of the applicant and shall include all of the following:

- 10 (1) The legal name, along with any assumed business name, principal address,
11 contact information, and social security number or taxpayer identification
12 number of the applicant.
- 13 (2) The applicant's form and place of organization, if applicable.
- 14 (3) A certificate of good standing from the state in which the applicant was
15 organized, if applicable.
- 16 (4) A certificate of authority from the North Carolina Secretary of State to
17 conduct business in this State, if required by Article 15 of Chapter 55 of the
18 General Statutes, or other evidence of the applicant's registration or
19 qualification to do business in this State.
- 20 (5) The most recent audited annual financial statement of the applicant, or if the
21 applicant is a wholly owned subsidiary, of the applicant's parent entity. This
22 statement shall include the balance sheet, statement of income or loss,
23 statement of changes in shareholder equity, if applicable, and statement of
24 changes in financial position.
- 25 (6) A record of any criminal convictions for the applicant, controlling person, or
26 any key management personnel for a 10-year period prior to the date of the
27 application, including authorization to perform a federal and State criminal
28 background check.
- 29 (7) A current schedule of the ranges and categories of the fees it charges
30 borrowers for servicing student loans.
- 31 (8) Any additional information that the Commissioner deems relevant.

32 (b) Fees. – An applicant shall include a nonrefundable license fee of one thousand dollars
33 (\$1,000) and a nonrefundable investigation fee of eight hundred dollars (\$800.00) with the
34 application.

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

38 (d) Abandoned Application. – The Commissioner may deem an application abandoned if
39 all of the following are true:

- 40 (1) The applicant fails to respond to a request for information by the
41 Commissioner within 60 days of the date of the request.
- 42 (2) The Commissioner has given the applicant 30 days' written notice of the
43 Commissioner's intention to deem the application abandoned.

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

- 46 (1) The applicant's financial condition is sound.
- 47 (2) The applicant's business will be conducted honestly, fairly, equitably,
48 carefully, efficiently, consistent with this Article's purposes and intent, and in
49 a manner commanding the community's confidence and trust.
- 50 (3) The applicant and the applicant's controlling persons and key management
51 personnel are qualified and of good character.

- (4) No person on behalf of the applicant has knowingly made a material misstatement or omission in the application.
- (5) The applicant meets other similar requirements determined by the Commissioner.

"§ 53-446. License expiration, surrender, and renewal.

(a) Expiration. – A student loan servicer license expires on September 30 of the odd-numbered year immediately following its issuance, unless it is renewed under subsection (c) of this section.

(b) Surrender. – If a licensee ceases engaging in student loan servicing in this State, the licensee shall do all of the following within 15 days of the date of the cessation:

- (1) Surrender its license to the Commissioner.
- (2) Give written notice to the Commissioner of the location where the licensee's records shall be stored and the name, address, and telephone number of an individual authorized to provide access to the records.

The surrender of a license under this subsection does not reduce or eliminate any civil or criminal liability of a licensee arising from acts or omissions occurring before the surrender.

(c) Renewal. – A licensee may apply to renew a license by submitting a written application to the Commissioner by September 1 of the year in which the license expires. The renewal application shall contain the same information and include the same fees as the initial application as provided in G.S. 53-445. An application that is submitted after September 1 of the year in which the license expires but before the license expires shall also include a nonrefundable late fee of one hundred dollars (\$100.00). The Commissioner shall consider a renewal application and investigate the licensee in the same manner as an initial application as provided in G.S. 53-445. The licensee's license shall be effective during the pendency of the renewal application.

"§ 53-447. Assessments.

(a) For the purpose of meeting the cost of regulation under this Article, each licensee shall pay into the Office of the Commissioner of Banks an assessment as provided in this subsection. The annual assessment shall be two thousand dollars (\$2,000) if the total volume of loans serviced by the licensee in the previous calendar year was no more than one million five hundred thousand dollars (\$1,500,000). If the total volume of loans serviced by the licensee in the previous calendar year was more than one million five hundred thousand dollars (\$1,500,000), the assessment shall consist of two thousand dollars (\$2,000), plus an additional sum calculated according to the following table:

<u>Annual Servicing Volume</u>	<u>Per Thousand</u>
<u>\$1,500,001 to \$2,500,000</u>	<u>\$0.07</u>
<u>\$2,500,001 to \$5,000,000</u>	<u>\$0.06</u>
<u>\$5,000,001 to \$10,000,000</u>	<u>\$0.05</u>
<u>\$10,000,001 to \$30,000,000</u>	<u>\$0.04</u>
<u>\$30,000,001 to \$100,000,000</u>	<u>\$0.03</u>
<u>\$100,000,001 to \$1,300,000,000</u>	<u>\$0.02</u>
<u>More than \$1,300,000,000</u>	<u>\$0.01.</u>

(b) The Commissioner may collect the assessment annually or in periodic installments.

"§ 53-448. Responsibilities of licensee.

(a) Duties to the Commissioner. –

- (1) Information update. – A licensee shall give written notice to the Commissioner of any change in the information provided in its initial application or most recent renewal application, within 10 business days after the information has changed.

- 1 (2) Report on student loans. – Upon the request of the Commissioner, a licensee
2 shall report on the licensee's activities in this State. This report shall include
3 all of the following:
4 a. The number of student loans the licensee is servicing.
5 b. The type and characteristics of the student loans.
6 c. The number of student loans in default, along with a breakdown of
7 student loans with 30-day, 60-day, and 90-day delinquencies.
8 d. Information on loss mitigation activities, including details on workout
9 arrangements undertaken.
10 (3) Access to records; cooperation. – If the Commissioner requests records from
11 the licensee, the licensee shall make the records available to the Commissioner
12 or send the records to the Commissioner within five business days of the
13 request. The Commissioner may allow additional time, if requested. A
14 licensee shall fully cooperate with an investigation or examination by the
15 Commissioner under this Article and shall compile information if requested
16 by the Commissioner.
17 (b) Duties to the Borrower. –
18 (1) General duties. – A licensee shall safeguard and account for any money
19 handled for a borrower, shall follow reasonable and lawful instructions from
20 the borrower, and shall act with reasonable skill, care, and diligence.
21 (2) Borrower information. – A licensee shall adopt policies and procedures to
22 verify that when it obtains the right to service a student loan, it receives all
23 information regarding a borrower, the borrower's account, and the borrower's
24 student loan, including the borrower's repayment status and any borrower
25 benefits associated with the student loan.
26 (3) Disclosures. – At the time a licensee obtains the right to service a student loan,
27 the licensee shall disclose in a conspicuous notice to the borrower all of the
28 following:
29 a. A current schedule of the ranges and categories of the fees it charges
30 borrowers for servicing student loans.
31 b. That the licensee is licensed by the Commissioner and that complaints
32 about the licensee may be submitted to the Commissioner.
33 (4) Borrower benefits. – A licensee shall honor the terms of all borrower benefits
34 that have been represented as being available to the borrower during the
35 repayment of the student loan, including any benefits for which the borrower
36 has not yet qualified.
37 (5) Response to inquiry. – A licensee shall respond to a written inquiry by a
38 borrower or a borrower's authorized representative within 30 days of receipt
39 of the inquiry. The licensee may adopt procedures to verify that the
40 representative is authorized to act on the borrower's behalf.
41 (6) Nonconforming payments. – For purposes of this subsection, "nonconforming
42 payment" means a payment that is either more or less than the required amount
43 of the student loan payment. If a licensee receives a nonconforming payment,
44 the licensee shall ask the borrower to provide a written instruction on how to
45 apply the nonconforming payment. A borrower's written instruction on how
46 to apply a nonconforming payment shall remain in effect for any future
47 nonconforming payment during the term of the student loan until the borrower
48 provides a different written instruction.
49 (7) Delinquency; default. – In the event of a delinquency or default on a student
50 loan, a licensee shall inform the borrower of the nature and extent of the

1 delinquency or default no later than 30 days after the delinquency or default
2 occurred.

3 (c) Other Duties. –

- 4 (1) Record retention. – Except as otherwise provided by federal law or by a
5 contract between the licensee and a federal agency, a licensee shall preserve
6 records of each student loan and all communications with each borrower for
7 at least two years following either (i) the final payment on the student loan or
8 (ii) the sale, assignment, or other transfer of the servicing of the student loan,
9 whichever occurs first.
- 10 (2) Consumer reporting. – If a licensee regularly reports information to a
11 consumer reporting agency as defined in G.S. 75-61, the licensee shall
12 annually submit a report of each borrower's payment performance to at least
13 one consumer reporting agency that compiles and maintains files on
14 consumers on a nationwide basis, as defined in 15 U.S.C. § 1681a.

15 **§ 53-449. Prohibited conduct.**

16 A licensee is prohibited from doing any of the following:

- 17 (1) Employing, directly or indirectly, any scheme, device, or artifice to defraud
18 or mislead borrowers.
- 19 (2) Engaging in any unfair trade or deceptive practice toward any person or
20 misrepresenting or omitting any material information in connection with the
21 servicing of a student loan, including any fees, payments due, loan terms, or
22 borrower obligations.
- 23 (3) Obtaining property by fraud or misrepresentation.
- 24 (4) Misapplying or recklessly applying payments to a student loan's balance.
- 25 (5) Providing inaccurate information to a credit reporting agency as defined in
26 G.S. 75-61 that causes harm to a borrower's creditworthiness.
- 27 (6) Making any false statement or omitting a material fact in connection with (i)
28 any information or report filed with a state or federal agency or (ii) any
29 investigation or examination conducted by the Commissioner or another state
30 or federal agency.
- 31 (7) Knowingly withholding, concealing, mutilating, or destroying any evidence
32 during an investigation or examination by the Commissioner under this
33 Article.
- 34 (8) Communicating with a borrower in any manner designed to harass or
35 intimidate the borrower.
- 36 (9) Violating State or federal privacy laws.
- 37 (10) Violating any other applicable federal law, including the federal Consumer
38 Credit Protection Act, Chapter 41 of Title 15 of the United States Code, (Truth
39 in Lending Act) and any regulations adopted under that act.
- 40 (11) Violating any other applicable State law, including Article 15 of Chapter 53
41 of the General Statutes or Chapter 24 of the General Statutes.

42 **§ 53-450. Commissioner's authority to investigate and examine.**

43 (a) Investigation and Examination. – In addition to the Commissioner's authority to
44 investigate an applicant in connection with an initial application under G.S. 53-445(c) or a
45 renewal application under G.S. 53-446(c), the Commissioner may investigate and examine a
46 student loan servicer subject to this Article, whether or not licensed, to determine compliance
47 with this Article.

48 (b) Powers. – In investigating and examining a student loan servicer under this Article,
49 the Commissioner may do any of the following:

- 50 (1) Access any records, regardless of the location, possession, control, or custody
51 of the records. The Commissioner may take possession of and control access

1 to the records in the place where they are usually kept. No person shall remove
2 or attempt to remove the records except pursuant to a court order or with the
3 Commissioner's consent.

4 (2) Subpoena any person to produce any evidence the Commissioner deems
5 relevant to the investigation or examination.

6 (3) Administer oaths and examine any person under oath concerning the student
7 loan servicer's business.

8 (4) Retain attorneys, accountants, other professionals, and specialists as
9 investigators, examiners, or auditors to conduct or assist in conducting the
10 investigation or examination.

11 (5) Enter into agreements or relationships with other government officials or
12 regulatory associations to improve efficiencies and reduce regulatory burden
13 by sharing resources, standardized or uniform methods or procedures, and
14 evidence obtained under the Commissioner's authority.

15 (6) Use, hire, contract for, or employ publicly or privately available analytical
16 systems, methods, or software to investigate or examine a student loan
17 servicer.

18 (7) Accept and rely on investigation and examination reports made by other
19 government officials.

20 (8) Accept audit reports made by an independent certified public accountant for
21 the student loan servicer on the same general subject matter as the audit, and
22 incorporate the audit report in a report by the Commissioner.

23 (c) Student Loan Servicer's Access. – The Commissioner shall not prevent a student loan
24 servicer from accessing its own records as necessary to conduct its ordinary business unless the
25 Commissioner has reason to believe there is a risk that the records will be altered or destroyed to
26 conceal a violation of this Article.

27 (d) Extraordinary Review. – If the Commissioner determines that the investigation or
28 examination requires an extraordinary review, the Commissioner may assess against the student
29 loan servicer the actual costs of conducting the extraordinary review, including time spent at the
30 hourly rate for the Commissioner's staff, to be determined by the State Banking Commission.

31 **§ 53-451. Confidentiality.**

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

34 (b) The Commissioner may enter into agreements or sharing arrangements with any state
35 or federal agency and may share otherwise confidential information pursuant to these
36 agreements, but only to the extent permitted by G.S. 53C-2-7(d). Information shared pursuant to
37 these agreements retain all applicable privileges and confidentiality protections provided by State
38 or federal law.

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

41 **§ 53-452. Commissioner's authority to discipline and enforce.**

42 (a) Disciplinary Authority. – The Commissioner may limit, suspend, revoke, or refuse to
43 renew a license issued under this Article for any violation of this Article or any rule adopted
44 under it.

45 (b) Cease and Desist Order. – The Commissioner may order a student loan servicer
46 subject to this Article to cease and desist from violating this Article or any rule adopted under it.

47 (c) Injunction. – The Commissioner may apply to the Wake County Superior Court for
48 an order enjoining a student loan servicer subject to this Article from violating this Article or any
49 rule adopted under it.

50 **§ 53-453. Civil penalty; restitution.**

1 (a) Civil Penalty. – The Commissioner may assess a civil penalty against a student loan
2 servicer subject to this Article not to exceed twenty-five thousand dollars (\$25,000) for a
3 violation of this Article. The clear proceeds of civil penalties imposed pursuant to this section
4 shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
5 In assessing a civil penalty, the Commissioner shall consider all of the following factors:

- 6 (1) The degree and extent of harm to borrowers.
- 7 (2) The nature, gravity, and duration of the violation.
- 8 (3) Whether the violation continued after a cease and desist order was issued by
9 the Commissioner.
- 10 (4) Whether the violation was committed willfully.
- 11 (5) Whether the violation reflects a continuing pattern of conduct.
- 12 (6) Whether the violation involved elements of fraud or deception of borrowers
13 or the Commissioner.
- 14 (7) Whether and the extent to which the student loan servicer profited by the
15 violation.
- 16 (8) Any failure of the student loan servicer to provide timely and complete
17 responses to any of the following:
 - 18 a. The Commissioner's inquires about the student loan servicer's
19 activities.
 - 20 b. Any request for records by the Commissioner.
- 21 (9) Whether the student loan servicer obstructed the inspection of records or any
22 other aspect of an investigation or examination by the Commissioner.
- 23 (10) Whether the student loan servicer exercised reasonable diligence to comply
24 with this Article and any rules adopted under this Article.
- 25 (11) Whether the student loan servicer reported the violation to the Commissioner,
26 and, if so, after what period of time following the violation.
- 27 (12) Efforts by the student loan servicer to correct the violation.
- 28 (13) Any prior violation by the student loan servicer of this Article, a similar law
29 of another state, or a similar federal law.
- 30 (14) Whether payment of the civil penalty will prevent payment of damages under
31 G.S. 53-454, payment of restitution under subsection (b) of this section, or
32 payment of any other relief in the nature of restitution.
- 33 (15) Any other factors that would tend to mitigate or aggravate the violation.

34 (b) Restitution. – If a student loan servicer subject to this Article violates this Article, the
35 Commissioner may order the student loan servicer to pay restitution to a borrower injured by the
36 violation.

37 **"§ 53-454. Civil remedy.**

38 (a) A borrower may bring a civil action for damages against a student loan servicer
39 subject to this Article if the student loan servicer violates this Article and the borrower is injured
40 by the violation.

41 (b) A violation of this Article is an unfair trade or deceptive practice for purposes of
42 Chapter 75 of the General Statutes.

43 (c) A borrower that prevails in an action under this section may recover actual damages
44 and costs and any other remedies, including attorneys' fees, provided under Chapter 75 of the
45 General Statutes.

46 **"§ 53-455. Service of process.**

47 (a) A student loan servicer subject to this Article is deemed to have done all of the
48 following:

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

1 (2) Appointed the Secretary of State as the student loan servicer's agent for the
2 purpose of accepting service of process in an action arising under this Article.

3 (b) For purposes of this Article, the Commissioner is deemed to have complied with the
4 requirements of law concerning service of process upon mailing by certified mail notice to a
5 student loan servicer subject to this Article, postage prepaid and addressed to the last known
6 address on file with the Commissioner.

7 "**§ 53-456. Rules; appeal by aggrieved person.**

8 (a) The State Banking Commission may adopt rules to implement this Article.

9 (b) Pursuant to G.S. 53C-2-6(b), any person aggrieved by any rule or order of the
10 Commissioner may appeal to the State Banking Commission for review upon providing written
11 notice within 20 days after the rule or order was adopted or issued. Any aggrieved party to a
12 decision of the State Banking Commission may petition for judicial review pursuant to
13 G.S. 53C-2-6(b).

14 "**§ 53-457. Annual report to the Governor and General Assembly.**

15 On January 1, 2022, and annually thereafter, the Commissioner shall submit a report to the
16 Governor, the joint legislative oversight committee with jurisdiction over banking, and the
17 Legislative Library that discusses all of the following:

18 (1) The implementation and overall effectiveness of the Student Loan
19 Ombudsman position established by G.S. 53-443.

20 (2) Any additional steps needed for the Commissioner to gain regulatory control
21 over the licensing and oversight of student loan servicers."

22 **SECTION 2.** Beginning with the 2020-2021 fiscal year, overrealized receipts that
23 are available to the Banking Commission each fiscal year are hereby appropriated to be used by
24 the Banking Commission in an amount necessary to provide the salary and benefits for the
25 Student Loan Ombudsman position established by G.S. 53-443, as enacted by Section 1 of this
26 act.

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

31 **SECTION 4.** G.S. 53-444 through G.S. 53-457, as enacted by Section 1 of this act,
32 become effective October 1, 2021, and apply to acts or omissions committed by student loan
33 servicers on or after that date. The remainder of this act becomes effective July 1, 2020.