

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 707

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

Sponsors: Representatives Hunt, Setzer, and Hardister (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Education - Universities, if favorable, Banking, if favorable, Rules, Calendar, and
Operations of the House

April 29, 2021

A BILL TO BE ENTITLED

AN ACT TO ENACT A STUDENT BORROWERS' BILL OF RIGHTS, TO PROVIDE THAT
THE COMMISSIONER OF BANKS SHALL LICENSE AND REGULATE STUDENT
LOAN SERVICERS, TO PROVIDE ADDITIONAL PROTECTIONS FOR STUDENT
CONSUMERS, AND TO ESTABLISH THE POSITION OF THE STUDENT LOAN
OMBUDSMAN.

The General Assembly of North Carolina enacts:

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

"Article 26.

"Student Borrowers' Bill of Rights.

"§ 53-440. Short title.

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

"§ 53-441. Purpose.

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

"§ 53-442. Definitions.

The following definitions apply in this Article:

(1) Borrower. – Any of the following:

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

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

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

(2) Commissioner. – The Commissioner of Banks.

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

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

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



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- 1 b. A person that directly or indirectly has ownership of or the power to
2 vote ten percent (10%) or more of a class of outstanding voting
3 securities of the entity.
- 4 c. In the case of a limited liability company, a managing member.
- 5 d. In the case of a partnership, a person that has the right to receive upon
6 dissolution, or has contributed, ten percent (10%) or more of the
7 capital of the partnership.
- 8 (5) Nationwide Multistate Licensing System and Registry (NMLS). – The
9 licensing system developed and maintained by the Conference of State Bank
10 Supervisors and the American Association of Residential Mortgage
11 Regulators for the licensing of persons under this Article.
- 12 (6) Overpayment. – A payment on a student loan in excess of the amount due
13 from a borrower for a given period.
- 14 (7) Partial payment. – A payment on a student loan account that contains one or
15 more individual loans in an amount less than the amount necessary to satisfy
16 the outstanding payment due on all loans in the student loan account.
- 17 (8) Person. – An individual, partnership, limited liability company, limited
18 partnership, corporation, association, or other group engaged in joint business
19 activities however organized.
- 20 (9) Servicing. – Engaging in any of the following for compensation or gain:
- 21 a. Receiving any scheduled periodic payment on a student loan from a
22 borrower or any notification that a borrower made a scheduled
23 periodic payment on a student loan and applying a payment to the
24 balance of the student loan.
- 25 b. During a period when no payment is required on a student loan,
26 maintaining account records for the student loan and communicating
27 with the borrower regarding the student loan on behalf of the owner of
28 the student loan.
- 29 c. Having the right to receive payments from a borrower when the loan
30 is delinquent or in default.
- 31 (10) Student loan. – A loan or agreement that is extended to a borrower expressly
32 to finance postsecondary education expenses or other school-related expenses.
33 This term does not include open-end credit or any loan secured by real
34 property.
- 35 (11) Student loan servicer. – Any person, regardless of location, responsible for
36 servicing a student loan, whether or not licensed under this Article.
- 37 (12) Written inquiry. – Any non-verbal communication in any format, whether
38 electronic or hard copy.

39 **"§ 53-443. License requirement for student loan servicers.**

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

43 (b) Exemptions. – The following are exempt from all provisions of this Article except for
44 G.S. 53-450 and G.S. 53-451:

- 45 (1) A bank, savings bank, credit union, or savings and loan association organized
46 under the laws of any state or the United States.
- 47 (2) A wholly owned subsidiary of an entity described in subdivision (1) of this
48 subsection.
- 49 (3) The State or any political subdivision of the State.
- 50 (4) College Foundation, Inc.

51 **"§ 53-444. License application.**

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

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

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

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

44 (d) Abandoned Application. – The Commissioner may deem an application abandoned if
45 the applicant fails to respond to a written request for information by the Commissioner within 30
46 days of the date of the request. The written request may be given to the applicant through the
47 NMLS or by other electronic means.

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

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

- 1 (2) The applicant's business will be conducted honestly, fairly, and in a manner
2 commanding the confidence and trust of the community.
- 3 (3) The applicant has demonstrated net worth necessary to satisfy the
4 requirements of G.S. 53-445.
- 5 (4) The applicant has obtained a surety bond in conformance with G.S. 53-446.
- 6 (5) Persons controlling the applicant, as a group, have degrees of character,
7 competence, and experience that command the confidence and trust of the
8 community and justify the belief that the applicant will operate safely,
9 soundly, and in compliance with the law.
- 10 (6) The applicant meets other similar requirements determined by the
11 Commissioner.

12 (f) Automatic Issuance of License for Federal Student Loan Servicing Contractors. – A
13 person seeking to act within this State as a student loan servicer is exempt from the procedures
14 described in subsections (a) through (d) of this section upon a determination by the Commissioner
15 that the person is a party to a contract awarded by the United States Secretary of Education under
16 20 U.S.C. § 1087f. Any person seeking this exemption shall submit a written request for
17 verification of exemption to the Commissioner. The request shall be in a form acceptable to the
18 Commissioner and shall include a copy of any written agreement and related documentation that
19 is the basis for the exemption. The following provisions apply to the exemption:

- 20 (1) Actions by Commissioner. – With regard to a person deemed exempt under
21 this subsection, the Commissioner shall do all of the following:
- 22 a. Automatically issue a license upon payment of the fees required by
23 subsection (b) of this section.
- 24 b. Automatically issue a renewal license upon payment of the assessment
25 required by G.S. 53-448.
- 26 (2) Notice. – A person issued a license pursuant to this subsection shall provide
27 the Commissioner with written notice within seven days after notification of
28 the expiration, revocation, or termination of any contract awarded by the
29 United States Secretary of Education under 20 U.S.C. § 1087f. The person has
30 30 days after notification to satisfy all requirements established under
31 subsections (a) and (b) of this section in order to continue to act within this
32 State as a student loan servicer. At the expiration of the 30-day period, if the
33 person seeking to act within this State as a student loan servicer has not
34 satisfied the requirements of subsections (a) and (b) of this section, the
35 Commissioner shall summarily suspend any license granted to the person
36 under this section.
- 37 (3) Preservation of authorities. – With respect to student loan servicing not
38 conducted pursuant to a contract awarded by the United States Secretary of
39 Education under 20 U.S.C. § 1087f, nothing in this section prevents the
40 Commissioner from issuing, or filing a civil action for, an order to temporarily
41 or permanently enjoin a person from acting as a student loan servicer or from
42 violating this Article.

43 **"§ 53-445. Minimum net worth.**

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

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

- 50 (1) The nature and volume of the projected or established business.
- 51 (2) The amount, nature, quality, and liquidity of assets.

- 1 (3) The amount and nature of liabilities.
- 2 (4) The history of operations and prospects for earning and retaining income.
- 3 (5) The quality of operations and management.
- 4 (6) The nature and quality of control persons.
- 5 (7) The history of compliance with State and federal law.
- 6 (8) Any other factors the Commissioner deems relevant.

7 **"§ 53-446. Surety bond.**

8 (a) Applicants shall be required to post a surety bond with the Commissioner at
9 application, and licensees shall maintain a surety bond in the amount of one hundred fifty
10 thousand dollars (\$150,000). If a servicer, however, has servicing volume in this State in a
11 calendar year in excess of ten million dollars (\$10,000,000) but less than fifty million dollars
12 (\$50,000,000), then the servicer's minimum bond amount shall be two hundred fifty thousand
13 dollars (\$250,000), and if a servicer has servicing volume in this State in a calendar year of fifty
14 million dollars (\$50,000,000) or more, then the servicer's minimum bond shall be five hundred
15 thousand dollars (\$500,000).

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

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

29 (d) The surety bond shall remain in effect until cancellation, which may occur only after
30 90 days' written notice to the Commissioner. Cancellation shall not affect any liability incurred
31 during that period.

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

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

39 **"§ 53-447. License renewal, expiration, and cancellation; no assignability; acquisition of**
40 **licensee.**

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

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

48 (c) Reinstatement. – If a licensee has not renewed prior to the expiration date, then the
49 licensee shall pay two hundred fifty dollars (\$250.00) as a nonrefundable late fee to reinstate the
50 license. In the event the licensee fails to obtain a reinstatement of the license prior to October 31,

1 the Commissioner shall require the licensee to comply with the requirements for initial licensure
2 as provided in G.S. 53-444, including the fees described in subsection (b) of that section.

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

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

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

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

17 **"§ 53-448. Assessments.**

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

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

30 **"§ 53-449. Duties of licensee to the Commissioner.**

31 (a) Notice of Material Event. –

32 (1) Within 20 days of a change or acquisition of control of a licensee, the licensee
33 shall provide notice of the event to the Commissioner through the NMLS in
34 writing and in a form prescribed by the Commissioner. The notice shall be
35 accompanied by any information, data, and records required by the
36 Commissioner.

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

41 a. The filing for bankruptcy or reorganization by the licensee.

42 b. The institution of revocation or suspension proceedings against the
43 licensee by any State or governmental agency.

44 c. Any felony indictment of the licensee or any control person related to
45 student loan servicing activities.

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

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

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

5 (1) The number of borrowers, number of student loans, and total outstanding
6 balance.

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

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

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

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

17 **"§ 53-450. Duties of student loan servicer to borrowers.**

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

23 (b) The 30-day period in subsection (a) of this section may be extended for not more than
24 15 days, if, before the end of the 30-day period, the student loan servicer notifies the borrower or
25 the borrower's representative of the extension and the reason for the delay.

26 (c) A student loan servicer shall not furnish to a consumer reporting agency, during the
27 60 days following receipt of a written inquiry related to a dispute on a borrower's payment on a
28 student loan, information regarding a payment that is the subject of the written request. A student
29 loan servicer, however, may furnish to a consumer reporting agency information regarding the
30 disputed payment after this period of time, even if the borrower submits an additional written
31 inquiry.

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

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

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

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

46 (2) The old student loan servicer shall transfer all records of the borrower to the
47 new student loan servicer within 45 days of the sale, assignment, or transfer.

48 (3) The new student loan servicer shall provide notice to the borrower of the sale,
49 assignment, or transfer at least seven days before the first payment is due to
50 the new student loan servicer. The notice shall include the identity of the new
51 student loan servicer, the effective date of the sale, assignment, or transfer, the

1 date the old student loan servicer will no longer accept payments, and the
2 contact information for the new student loan servicer.

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

8 **"§ 53-451. Prohibited conduct.**

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

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

45 **"§ 53-452. Commissioner's authority to investigate and examine.**

46 (a) For purposes of carrying out this Article, the Commissioner may access any
47 documents or information, including all of the following:

- 48 (1) Criminal, civil, and administrative history information, including data
49 unrelated to a conviction.
- 50 (2) Personal history and experience information, including independent credit
51 reports obtained from a consumer reporting agency.

1 (3) Any other documents, information, or evidence the Commissioner deems
2 relevant to the inquiry, investigation, or examination regardless of the
3 location, possession, control, or custody of the documents or information.

4 (b) The Commissioner may investigate or examine any student loan servicer as often as
5 necessary to carry out the purposes of this Article. The Commissioner may interview borrowers,
6 as well as the student loan servicer's controlling persons, employees, independent contractors,
7 and agents. The Commissioner may order the attendance of and examine under oath all persons
8 whose testimony about the student loan servicing activity the Commissioner deems relevant. The
9 Commissioner may also order the student loan servicer to produce documents or information the
10 Commissioner deems relevant. Any investigation or examination that, in the opinion of the
11 Commissioner, requires extraordinary review, investigation, or examination is subject to the
12 actual costs of additional expenses and the hourly rate for the Office of the Commissioner of
13 Banks' staff's time, to be determined annually by the State Banking Commission.

14 (c) Upon request, each student loan servicer shall make available in a location that is
15 acceptable to the Commissioner the records relating to the operations of the student loan servicer.
16 No person shall knowingly withhold, remove, secrete, mutilate, or destroy any records or
17 information. The Commissioner may control access to the records by moving them to another
18 location or placing a person in exclusive charge of them where they are usually kept. During this
19 period of control, no person shall remove any records or information except pursuant to a court
20 order or with the consent of the Commissioner. Unless the Commissioner has a reason to believe
21 the records are at risk of being withheld, removed, secreted, mutilated, or destroyed, the student
22 loan servicer shall have access to them.

23 (d) Each student loan servicer shall make or compile reports as directed by the
24 Commissioner to carry out the purposes of this section, including any of the following:

25 (1) Accounting compilations.

26 (2) Information lists and data concerning student loan servicing activities in a
27 format prescribed by the Commissioner.

28 (3) Periodic reports, including any of the following:

29 a. Annual report questionnaires.

30 b. Any report required by the NMLS.

31 (e) To carry out the purposes of this section, the Commissioner may do any of the
32 following:

33 (1) Retain attorneys, accountants, or other professionals and specialists as
34 examiners, auditors, or investigators to assist with the investigation or
35 examination.

36 (2) Enter into agreements or relationships with other governmental agencies or
37 regulatory associations to improve efficiencies and reduce the regulatory
38 burden by sharing resources, standardized or uniform methods or procedures,
39 or documents or information obtained under this section.

40 (3) Use, hire, contract, or employ publicly or privately available analytical
41 systems, methods, or software.

42 (4) Accept and rely on investigation and examination reports made by other
43 governmental agencies.

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

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

- 1 (1) Respond to inquiries from the Commissioner regarding any complaint filed
2 against the student loan servicer that appears to involve a violation of this
3 Article or any rule adopted or order issued under this Article.
- 4 (2) Respond to and cooperate fully with notices from the Commissioner relating
5 to the scheduling and conducting of an investigation or examination.
- 6 (3) Consent to a criminal history record check. The refusal constitutes grounds
7 for the Commissioner to deny licensure to the applicant as well as any person
8 controlled by the applicant.

9 **"§ 53-453. Confidentiality.**

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

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

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

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

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

29 **"§ 53-454. Regulatory authority.**

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

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

39 **"§ 53-455. Disciplinary action.**

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

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

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

46 a. Submitted an application for licensure, report, or other document to
47 the Commissioner that, as of its effective date or later, contained a
48 statement that, in light of the circumstances under which it was made,
49 is false or misleading with respect to a material fact.

50 b. Violated any provision of this Article or rule adopted or order issued
51 under this Article.

- 1 c. Is permanently or temporarily enjoined by a court from engaging in
2 student loan servicing.
3 d. Is the subject of an order entered within the past five years by any
4 governmental agency with jurisdiction over the student loan servicing
5 industry.

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

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

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

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

18 "**§ 53-456. Civil penalty; restitution; disgorgement; authority to prohibit certain conduct.**

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

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

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

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

34 "**§ 53-457. Civil remedy.**

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

40 (b) A violation of this Article or rule adopted or order issued under this Article is an
41 unfair or deceptive trade practice for purposes of Chapter 75 of the General Statutes.

42 "**§ 53-458. Service of process.**

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

- 44 (1) Consented to the jurisdiction of the courts of this State for an action arising
45 under this Article.
46 (2) Appointed the Secretary of State as the licensee's agent for the purpose of
47 accepting service of process in an action arising under this Article.

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

51 "**§ 53-459. Rules; appeal by aggrieved person.**

1 **SECTION 4.** If any provision of this act or its application to any person or
2 circumstance is held invalid, the invalidity does not affect other provisions or applications of this
3 act that can be given effect without the invalid provision or application and, to this end, the
4 provisions of this act are severable.

5 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
6 law.