AMENDED

February 19, 2020

**H. 3197**

Introduced by Reps. Govan, S. Williams, Garvin, Jefferson and R. Williams

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Read the first time January 8, 2019.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “STUDENT LOAN BILL OF RIGHTS ACT” BY ADDING ARTICLE 3 TO CHAPTER 103, TITLE 59, SO AS TO PROVIDE FOR THE REGULATION OF STUDENT EDUCATION LOAN SERVICERS BY THE COMMISSION ON HIGHER EDUCATION.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 103, Title 59 of the 1976 Code is amended by adding:

“Article 3

Student Loan Bill of Rights

Section 59‑103‑300. This act must be known and may be cited as the ‘Student Loan Bill of Rights Act’.

Section 59‑103‑310. As used in this article:

(1) ‘Administrator’ means the administrator of the Department of Consumer Affairs (department) or the administrator’s designees.

(2) ‘Person’ means a natural person, partnership, limited liability company, limited partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.

(3) ‘Servicing’ means:

(a) receiving scheduled periodic payments from a student loan borrower pursuant to the terms of a student education loan;

(b) applying the payments of principal and interest and such other payments with respect to the amounts received from a student loan borrower as may be required pursuant to the terms of a student education loan; and

(c) performing other administrative services with respect to a student education loan.

(4) ‘Student education loan’ means the creation or forbearance of debt incurred primarily for personal use to finance postsecondary education or other school‑related expenses. This term does not include an extension of credit secured by a first lien or equivalent security interest in real estate.

(5) ‘Student loan borrower’ or ‘borrower’ means:

(a) a resident of this State who has received or agreed to pay a student education loan; or

(b) a person who shares legal responsibility with a resident for repaying the student education loan.

(6) ‘Student loan servicer’ or ‘servicer’ means a person, wherever located, regularly engaged in the business of, and responsible for, the servicing of a student education loan to a student loan borrower. This term does not include banks, credit unions, savings and loan associations, and savings banks that are authorized legally to accept monetary deposits from consumers and admitted to transact business in South Carolina.

Section 59‑103‑320. (A) The administrator shall, using licensing and investigation fees collected pursuant to Section 59‑103‑350, support, maintain, and designate a student loan ombudsman to provide timely assistance to student loan borrowers.

(B) The student loan ombudsman shall:

(1) receive, review, and attempt to resolve complaints from student loan borrowers including, but not limited to, in collaboration with institutions of higher education, student loan servicers, and any other participants in student loan lending including, but not limited to, originators servicing their own student education loans;

(2) compile and analyze data on student loan borrower complaints as described in item (1);

(3) assist student loan borrowers to understand their rights and responsibilities under the terms of student education loans;

(4) provide information to the public, agencies, members of the General Assembly, and others regarding the problems and concerns of student loan borrowers and make recommendations for resolving those problems and concerns;

(5) analyze and monitor the development and implementation of federal, state, and local laws, ordinances, regulations, rules, and policies relating to student loan borrowers and recommend any necessary changes;

(6) review the complete student education loan history for a student loan borrower who provides written consent for such a review;

(7) disseminate information concerning the availability of the student loan ombudsman to assist student loan borrowers and potential student loan borrowers, public institutions of higher education, student loan servicers, and any other participants in student education loan lending with any student education loan servicing concerns;

(8) establish and maintain a student loan borrower education course within existing resources that includes educational presentations and materials regarding student education loans; provided the course must include, but is not limited to, key loan terms, documentation requirements, monthly payment obligations, income‑based repayment options, and loan forgiveness and disclosure requirements; and

(9) take any other actions necessary to fulfill the duties of the student loan ombudsman as set forth in this article.

Section 59‑103‑330. The administrator annually shall submit a report before January thirty‑first to the Senate Education Committee and the House Education and Public Works Committee. The report must include:

(1) a description of actions taken with respect to the implementation of this article;

(2) an assessment of the overall effectiveness of the student loan ombudsman; and

(3) recommendations regarding additional steps for the commission to gain regulatory control over licensing and enforcement with respect to student loan servicers.

Section 59‑103‑340. The administrator shall retain and use monies received in the administration and enforcement of this article to implement the provisions of this article.

Section 59‑103‑350. (A) A person may not act as a student loan servicer, directly or indirectly, without first:

(1) obtaining a license from the administrator pursuant to this section; and

(2) filing a surety bond in an amount determined by the administrator, based on the total dollar amount of loans subject to regulation by the administrator pursuant to this article in a calendar year in this State pursuant to the following:

(a) dollar volume of student education loans up to $49,999,999: surety bond of $50,000;

(b) dollar volume of student education loans from $50,000,000 to $249,999,999: surety bond of $100,000;

(c) dollar volume of student education loans greater than $250,000,000: surety bond of $150,000.

(3) In no case is the surety bond less than fifty thousand dollars. The surety bond must be executed by a surety company authorized by the laws of this State to transact business within this State. The surety bond must be in a form satisfactory to the administrator, must be executed to the administrator, and must be for the use of the State for the recovery of expenses, fines, and fees levied pursuant to this chapter and for consumers who have losses or damages as a result of noncompliance with this chapter by the servicer. The full amount of the surety bond must be in effect at all times. The license of a licensee expires upon the termination of the bond by the surety company, unless a new bond is filed with the administrator before the termination of the previous bond. If the license expires based on bond termination, all licensed activity must cease and the person must apply for a license pursuant to this section.

(B) A person seeking to act within this State as a student loan servicer shall make a written application to the administrator for an initial license in such form as the administrator prescribes. The application must be accompanied by:

(1) a financial statement prepared by a certified public accountant or a public accountant, a general partner if the applicant is a partnership, a corporate officer, if the applicant is a corporation, or a member duly authorized to execute such documents if the applicant is a limited liability company or association;

(2) information regarding the history of criminal convictions of the following to permit the administrator to make the findings under subsection (C):

(a) the applicant;

(b) partners, if the applicant is a partnership;

(c) members, if the applicant is a limited liability company or association; and

(d) officers, directors, and principal employees, if the applicant is a corporation;

(3) a nonrefundable license fee of one thousand dollars; and

(4) a nonrefundable investigation fee of eight hundred dollars.

(C) Upon the filing of an application for an initial or renewal license and the payment of the fees for licensing and investigation pursuant to subsection (B), the administrator shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant. The administrator may conduct a state and national criminal history records check, supported by fingerprints, of the applicant and of each partner, member, officer, director, and principal employee of the applicant. The actual cost of obtaining the state and national criminal history record checks shall be paid by the applicant. The administrator may issue a license if the administrator finds that:

(1) the applicant’s financial condition is sound;

(2) the applicant’s business will be conducted honestly, fairly, equitably, carefully, and efficiently within the purposes and intent of this article and in a manner commanding the confidence and trust of the community;

(3) if the applicant is:

(a) an individual, the individual is in all respects properly qualified and of good character;

(b) a partnership, each partner is in all respects properly qualified and of good character;

(c) a corporation, the president, chair of the executive committee, senior officer responsible for the corporation’s business and chief financial officer, or any other person who performs similar functions as determined by the administrator, each director, each trustee, and each shareholder owning ten percent or more of each class of the securities of the corporation or association is in all respects properly qualified and of good character; or

(d) a limited liability company or association, each member is in all respects properly qualified and of good character;

(4) no person on behalf of the applicant knowingly has made an incorrect statement of a material fact in the application or in any report or statement made pursuant to this article; and

(5) the applicant has met any other requirements as determined by the administrator.

Section 59‑103‑360. A student loan servicer may not:

(1) directly or indirectly employ a scheme, device, or artifice to defraud or mislead student loan borrowers;

(2) engage in an unfair or deceptive practice toward any person or misrepresent or omit any material information in connection with the servicing of a student education loan including, but not limited to, misrepresenting the amount, nature, or terms of any fee or payment due or claimed to be due on a student education loan, the terms and conditions of the loan agreement, or the borrower’s obligations under the loan;

(3) obtain property by fraud or misrepresentation;

(4) knowingly misapply or recklessly apply student education loan payments to the outstanding balance of a student education loan;

(5) knowingly or recklessly provide inaccurate information to a credit bureau, thereby harming the determination of a student loan borrower’s creditworthiness;

(6) fail to report both the favorable and unfavorable payment history of a student loan borrower to a nationally recognized consumer credit bureau at least annually if the student loan servicer regularly reports information to such a credit bureau;

(7) refuse to communicate with an authorized representative of a student loan borrower who provides a written authorization signed by the student loan borrower, except that the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower;

(8) negligently make any false statement or knowingly and wilfully omit a material fact in connection with information or reports filed with a governmental agency or in connection with an investigation conducted by the administrator or another governmental agency; or

(9) fail to evaluate a student loan borrower for an income‑based repayment program prior to placing the borrower in forbearance or default, if an income‑based repayment program is available to the borrower.

(10) Unless otherwise provided by federal law, a servicer may not charge a borrower any fee to modify, defer, forbear, renew, extend, or amend the borrower’s student education loan.

Section 59‑103‑370. The administrator has the authority to conduct investigations and examinations as follows:

(1) For purposes of initial licensing, license renewal, license suspension, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this article, the administrator may access, receive, and use any books, accounts, records, files, documents, information, or evidence belonging to a licensee or person under examination including, but not limited to, criminal, civil, and administrative history information; personal history and experience information, including independent credit reports obtained from a consumer reporting agency, and any other documents, information or evidence the administrator considers relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information, or evidence.

(2) For the purposes of investigating violations or complaints arising under this article or for the purposes of examination, the administrator may review, investigate, or examine any licensee or person subject to this article. The administrator may direct, subpoena, or order the attendance of and examine under oath any person whose testimony may be required about the student education loan or the business or subject matter of any such examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the administrator considers relevant to the inquiry.

(3) In order to carry out the purposes of this section, the administrator may:

(a) enter into agreements or relationships with other governmental officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods, or procedures and documents, records, information, or evidence obtained under this section;

(b) accept and rely on examination or investigation reports made by other governmental officials, within or outside of this State; and

(c) accept audit reports made by an independent certified public accountant for the licensee or person subject to this article in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in a report of examination, report of investigation, or other writing of the administrator.

(4) A licensee or person subject to investigation or examination under this section may not knowingly withhold, abstract, remove, mutilate, or destroy any books, physical records, computer records, or other information relating to information regulated under this article.

(5) Whenever a person has violated, is violating, or is about to violate a provision of this article or a regulation adopted pursuant to this article, or that a licensee or an owner, director, officer, member, partner, shareholder, trustee, employee, or agent of the licensee has committed fraud, engaged in dishonest activities, or made a misrepresentation, the administrator may:

(a) issue an administrative order to suspend, revoke, or refuse to renew the person’s license and impose equitable and injunctive relief including, but not limited to, cease and desist orders and fines; and

(b) bring a civil action to restrain any person from violating this article and for appropriate other relief including, but not limited to, recovering civil penalties.

Section 59‑103‑380. A student loan servicer shall comply with all applicable federal laws and regulations relating to student loan servicing and the regulations adopted pursuant to that act. In addition to any other remedies provided by law, a violation of that act or regulations adopted pursuant to that act is a violation of this section and a basis upon which the administrator may take enforcement action pursuant to this article.

Section 59‑103‑390. The provisions of the Administrative Procedures Act of Chapter 23, Title 1 apply to this article. The administrator may promulgate regulations necessary to effectuate the purposes of this article.”

SECTION 2. This act takes effect January 1, 2020.

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