

HOUSE BILL 594

I1, F2, I3

9lr1594
CF SB 670

By: **The Speaker (By Request – Office of the Attorney General) and Delegates Atterbeary, Barve, Clippinger, D.E. Davis, Fennell, Gaines, Hettleman, Hill, Kelly, Sample–Hughes, Stein, Valentino–Smith, and Wilson**

Introduced and read first time: February 4, 2019

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 18, 2019

CHAPTER _____

1 AN ACT concerning

2 **Financial Institutions – Student Loan Servicers – Unfair, Abusive, or Deceptive**
3 **Trade Practices**

4 FOR the purpose of prohibiting a student loan servicer from employing any scheme, device,
5 or artifice to mislead a student loan borrower; prohibiting a student loan servicer
6 from engaging in any unfair, abusive, or deceptive trade practice toward any person;
7 prohibiting a student loan servicer from misrepresenting or omitting certain
8 information in connection with the servicing of a certain loan; prohibiting a student
9 loan servicer from obtaining property by misrepresentation or omission of a certain
10 fact; prohibiting a student loan servicer from applying a payment from a student
11 loan borrower to a certain loan in a certain manner, except under certain
12 circumstances; prohibiting a student loan servicer from knowingly or recklessly
13 misapplying or refusing to correct a misapplication of a certain payment under
14 certain circumstances; prohibiting a student loan servicer from knowingly or
15 recklessly providing certain information, or refusing to correct certain information
16 provided, to a certain consumer reporting agency; prohibiting a student loan servicer
17 from failing to report a certain history to a certain consumer reporting agency under
18 certain circumstances; prohibiting a student loan servicer from refusing to
19 communicate with a certain representative of a certain student loan borrower under
20 certain circumstances; prohibiting a student loan servicer from negligently making
21 a certain statement or omitting a certain fact in connection with certain information
22 filed with, or a certain investigation conducted by, a certain government agency;
23 prohibiting a student loan servicer from violating a certain law concerning student

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



education loan servicing; authorizing a certain student loan servicer to adopt procedures to verify that a certain representative of a student loan borrower is authorized to act in a certain manner; requiring a student loan servicer to respond to a certain inquiry or complaint in a certain manner, except under certain circumstances; requiring a student loan servicer to provide a certain document under certain circumstances; requiring a student loan servicer to apply a certain payment in a certain manner, except under certain circumstances; providing that a violation of this Act is an unfair, abusive, or deceptive trade practice and is subject to certain enforcement and penalty provisions, including certain criminal penalty; providing that violations of this Act are subject to the enforcement authority of the Commissioner of Financial Regulation; providing that the Student Loan Ombudsman may refer complaints by student loan borrowers to the Commissioner; repealing a certain reporting requirement; providing that the Nondepository Special Fund shall cover the direct and indirect costs of the Commissioner fulfilling duties under this Act; defining certain terms; and generally relating to student loan servicers.

BY adding to

Article – Education

Section ~~26–603~~ 26–604 to be under the new subtitle “Subtitle 6.

Student Loan Servicers”

Annotated Code of Maryland

(2018 Replacement Volume and 2018 Supplement)

BY repealing

Article – Financial Institutions

Section 2–104.1(h)

Annotated Code of Maryland

(2011 Replacement Volume and 2018 Supplement)

BY adding to

Article – Financial Institutions

Section 2–104.1(h) and 11–610(c)(15)

Annotated Code of Maryland

(2011 Replacement Volume and 2018 Supplement)

BY repealing and reenacting, with amendments,

Article – Financial Institutions

Section 11–610(c)(14) and (15)

Annotated Code of Maryland

(2011 Replacement Volume and 2018 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Education

SUBTITLE 6. STUDENT LOAN SERVICERS.

26-601.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "CONSUMER REPORTING AGENCY" HAS THE MEANING STATED IN § 14-1201 OF THE COMMERCIAL LAW ARTICLE.

(C) "NONCONFORMING PAYMENT" MEANS A PAYMENT MADE BY A STUDENT LOAN BORROWER THAT IS MORE OR LESS THAN THE REQUIRED PAYMENT FOR A STUDENT EDUCATION LOAN ACCOUNT.

(D) "SERVICING" MEANS:

(1) (I) RECEIVING ANY SCHEDULED PERIODIC PAYMENTS FROM A STUDENT LOAN BORROWER ~~ACCORDING TO THE TERMS OF A STUDENT EDUCATION LOAN~~ OR NOTIFICATION OF THE PAYMENTS; AND

~~(2)~~ (II) APPLYING THE PAYMENTS FROM TO A STUDENT LOAN BORROWER BORROWER'S RECEIVED ACCOUNT ACCORDING TO THE TERMS OF A STUDENT EDUCATION LOAN OR A CONTRACT GOVERNING THE SERVICES;

(2) DURING A PERIOD WHEN NO PAYMENT IS REQUIRED ON A STUDENT EDUCATION LOAN;

(I) MAINTAINING ACCOUNT RECORDS FOR THE STUDENT EDUCATION LOAN; AND

(II) COMMUNICATING WITH THE STUDENT LOAN BORROWER REGARDING THE STUDENT EDUCATION LOAN ON BEHALF OF THE HOLDER OF THE STUDENT EDUCATION LOAN; OR

(3) INTERACTING WITH A STUDENT LOAN BORROWER ~~IN CONNECTION WITH THE REPAYMENT, RESTRUCTURING, OR DEFERRAL OF REPAYMENT OF A STUDENT EDUCATION LOAN; OR, INCLUDING INTERACTIONS TO HELP PREVENT DEFAULT ON OBLIGATIONS ARISING FROM A STUDENT EDUCATION LOAN, TO FACILITATE THE ACTIVITIES DESCRIBED IN ITEM (1) OR (2) OF THIS SUBSECTION.~~

~~(4) PERFORMING OTHER ADMINISTRATIVE SERVICES RELATED TO A STUDENT EDUCATION LOAN.~~

(E) (1) “STUDENT EDUCATION LOAN” MEANS ANY LOAN THAT IS:

(I) MADE, INSURED, OR GUARANTEED UNDER TITLE IV OF THE HIGHER EDUCATION ACT OF 1965, AS AMENDED; OR

(II) REGARDLESS OF WHETHER THE LOAN IS PROVIDED THROUGH THE EDUCATIONAL INSTITUTION THAT THE STUDENT LOAN BORROWER ATTENDS OR DIRECTLY TO THE STUDENT LOAN BORROWER FROM THE LENDER, EXTENDED TO AN INDIVIDUAL WITH THE EXPRESS EXPECTATION THAT THE FUNDS EXTENDED WILL BE USED IN WHOLE OR IN PART TO PAY EXPENSES THAT ARE INCLUDED AS PART OF THE COST OF ATTENDANCE OF A STUDENT AS DEFINED IN 20 U.S.C. § 1087.

(2) “STUDENT EDUCATION LOAN” INCLUDES A LOAN THAT IS EXTENDED IN ORDER TO REFINANCE OR CONSOLIDATE A CONSUMER’S EXISTING STUDENT EDUCATION LOANS.

(3) “STUDENT EDUCATION LOAN” DOES NOT INCLUDE, REGARDLESS OF THE PURPOSE FOR THE LOAN, A LOAN:

(I) UNDER AN OPEN-END CREDIT PLAN AS DEFINED IN 12 C.F.R. § 1026.2; OR

(II) THAT IS SECURED BY REAL PROPERTY, NOTWITHSTANDING ANY ELECTION OF LAW OR DESIGNATION OF STATUS IN ANY CONTRACT, USED FOR FINANCING POSTSECONDARY EDUCATION OR OTHER POSTSECONDARY SCHOOL-RELATED EXPENSES.

(F) “STUDENT LOAN BORROWER” MEANS A RESIDENT OF THE STATE WHO:

(1) HAS RECEIVED OR AGREED TO PAY A STUDENT EDUCATION LOAN;
OR

(2) SHARES REPAYMENT RESPONSIBILITY WITH A RESIDENT DESCRIBED IN ITEM (1) OF THIS SUBSECTION.

(G) (1) “STUDENT LOAN SERVICER” MEANS A PERSON, REGARDLESS OF LOCATION, RESPONSIBLE FOR SERVICING A STUDENT EDUCATION LOAN TO A STUDENT LOAN BORROWER.

(2) “STUDENT LOAN SERVICER” INCLUDES A TRUST ENTITY PERFORMING OR ~~RECEIVING THE BENEFIT OF~~ HAVING THE AUTHORITY TO CONTROL STUDENT LOAN SERVICING.

1 **26-602.**

2 (A) ~~A~~ EXCEPT AS OTHERWISE REQUIRED BY FEDERAL LAW OR A COURT
3 ORDER, A STUDENT LOAN SERVICER MAY NOT:

4 (1) EMPLOY, DIRECTLY OR INDIRECTLY, ANY SCHEME, DEVICE, OR
5 ARTIFICE TO MISLEAD A STUDENT LOAN BORROWER;

6 (2) ENGAGE IN ANY UNFAIR, ABUSIVE, OR DECEPTIVE TRADE
7 PRACTICE TOWARD ANY PERSON;

8 (3) MISREPRESENT INFORMATION OR OMIT ANY MATERIAL
9 INFORMATION IN CONNECTION WITH THE SERVICING OF A STUDENT EDUCATION
10 LOAN, INCLUDING:

11 (I) ANY FEE OWED BY A STUDENT LOAN BORROWER;

12 (II) ANY PAYMENT DUE BY A STUDENT LOAN BORROWER;

13 (III) THE APPROPRIATENESS OR AVAILABILITY OF A STUDENT
14 LOAN BORROWER'S REPAYMENT OPTIONS;

15 (IV) THE TERMS AND CONDITIONS OF THE STUDENT EDUCATION
16 LOAN; OR

17 (V) THE STUDENT LOAN BORROWER'S OBLIGATIONS UNDER
18 THE STUDENT EDUCATION LOAN;

19 (4) OBTAIN PROPERTY BY MISREPRESENTATION OF FACT OR
20 OMISSION OF MATERIAL FACT;

21 (5) ~~APPLY A PAYMENT FROM A STUDENT LOAN BORROWER TO A~~
22 ~~STUDENT EDUCATION LOAN IN A MANNER DETRIMENTAL TO THE STUDENT LOAN~~
23 ~~BORROWER ON OR AFTER FEBRUARY 1, 2020, ALLOCATE A NONCONFORMING~~
24 ~~PAYMENT IN A MANNER OTHER THAN AS DIRECTED BY THE STUDENT LOAN~~
25 ~~BORROWER IF, IN WRITING OR ELECTRONICALLY, THE STUDENT LOAN BORROWER:~~

26 (I) MAKES A ONE-TIME DIRECTION FOR THE ALLOCATION OF
27 FUTURE PAYMENTS;

28 (II) DIRECTS AN ALLOCATION OF A PAYMENT AT THE TIME THE
29 PAYMENT IS MADE;

(III) DIRECTS AN ALLOCATION IN RESPONSE TO AN INQUIRY BY
THE STUDENT LOAN SERVICER; OR

(IV) CHANGES AN EXISTING DIRECTION FOR THE ALLOCATION
OF FUTURE PAYMENTS;

(6) KNOWINGLY OR RECKLESSLY MISAPPLY, OR REFUSE TO CORRECT
A MISAPPLICATION OF:

~~(H) A PAYMENT FROM A STUDENT LOAN BORROWER; OR~~

~~(H) EXCEPT AS OTHERWISE REQUIRED BY FEDERAL LAW, A
FEDERAL STUDENT EDUCATION LOAN AGREEMENT, OR A CONTRACT BETWEEN THE
FEDERAL GOVERNMENT AND A STUDENT LOAN SERVICER, A NONCONFORMING
PAYMENT IN A MANNER THAT WAS NOT REQUESTED BY THE STUDENT LOAN
BORROWER;~~

(7) KNOWINGLY OR RECKLESSLY PROVIDE INACCURATE
INFORMATION TO A CONSUMER REPORTING AGENCY, OR REFUSE TO CORRECT
INACCURATE INFORMATION PROVIDED TO A CONSUMER REPORTING AGENCY;

(8) IF A STUDENT LOAN SERVICER REGULARLY REPORTS
INFORMATION TO A CONSUMER REPORTING AGENCY, FAIL TO REPORT THE
FAVORABLE HISTORY OF A STUDENT LOAN BORROWER TO A NATIONALLY
RECOGNIZED CONSUMER REPORTING AGENCY AT LEAST ONCE A YEAR;

(9) SUBJECT TO SUBSECTION (B) OF THIS SECTION, REFUSE TO
COMMUNICATE WITH AN AUTHORIZED REPRESENTATIVE OF A STUDENT LOAN
BORROWER WHO PROVIDES A WRITTEN AUTHORIZATION SIGNED BY THE STUDENT
LOAN BORROWER;

(10) NEGLIGENTLY MAKE A FALSE STATEMENT OR OMIT A MATERIAL
FACT IN CONNECTION WITH ANY INFORMATION REPORT FILED WITH, OR ANY
INVESTIGATION CONDUCTED BY, A STATE OR LOCAL GOVERNMENT AGENCY; OR

(11) VIOLATE ANY FEDERAL LAW CONCERNING STUDENT EDUCATION
LOAN SERVICING.

(B) A STUDENT LOAN SERVICER MAY ADOPT PROCEDURES TO VERIFY THAT
AN AUTHORIZED REPRESENTATIVE OF A STUDENT LOAN BORROWER IS, IN FACT,
AUTHORIZED TO ACT ON BEHALF OF THE STUDENT LOAN BORROWER.

(C) (1) A STUDENT LOAN SERVICER SHALL ACKNOWLEDGE RECEIPT OF A
WRITTEN INQUIRY OR COMPLAINT FROM A STUDENT LOAN BORROWER OR THE

AUTHORIZED REPRESENTATIVE OF A STUDENT LOAN BORROWER WITHIN 10 DAYS AFTER RECEIVING THE INQUIRY OR COMPLAINT.

(2) ~~A~~ UNLESS A RESPONSE TO THE WRITTEN INQUIRY IS INCLUDED IN THE ACKNOWLEDGMENT REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION, A STUDENT LOAN SERVICER SHALL PROVIDE INFORMATION RESPONDING TO A WRITTEN INQUIRY OR COMPLAINT RECEIVED UNDER PARAGRAPH (1) OF THIS SUBSECTION WITHIN 30 DAYS AFTER RECEIVING THE INQUIRY OR COMPLAINT.

(3) IF A WRITTEN INQUIRY OR COMPLAINT RECEIVED UNDER PARAGRAPH (1) OF THIS SUBSECTION RELATES TO A STUDENT LOAN BORROWER'S ACCOUNT BALANCE, THE INFORMATION PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL:

(I) STATE THAT THE STUDENT LOAN SERVICER HAS CORRECTED THE ACCOUNT BALANCE; OR

(II) EXPLAIN WHY THE STUDENT LOAN SERVICER BELIEVES THAT THE STUDENT LOAN BORROWER'S ACCOUNT IS CORRECT.

(D) IF A STUDENT LOAN BORROWER REQUESTS A DOCUMENT CONCERNING THE ACCOUNT OF THE STUDENT LOAN BORROWER THAT IS IN THE POSSESSION OR CONTROL OF A STUDENT LOAN SERVICER, THE STUDENT LOAN SERVICER SHALL PROVIDE THE DOCUMENT WITHIN 30 DAYS AFTER RECEIVING THE REQUEST.

~~(E) IF A STUDENT LOAN SERVICER RECEIVES A NONCONFORMING PAYMENT, THE STUDENT LOAN SERVICER SHALL:~~

~~(1) NOTIFY THE STUDENT LOAN BORROWER THAT THE PAYMENT IS A NONCONFORMING PAYMENT WITHIN 10 DAYS AFTER RECEIVING THE PAYMENT; AND~~

~~(2) ASK THE STUDENT LOAN BORROWER HOW THE STUDENT LOAN BORROWER WOULD LIKE THE STUDENT LOAN SERVICER TO APPLY THE NONCONFORMING PAYMENT TO THE STUDENT LOAN BORROWER'S ACCOUNT.~~

26-603.

A VIOLATION OF THIS SUBTITLE IS:

(1) AN UNFAIR, ABUSIVE, OR DECEPTIVE TRADE PRACTICE WITHIN THE MEANING OF TITLE 13 OF THE COMMERCIAL LAW ARTICLE; AND

(2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS CONTAINED IN TITLE 13 OF THE COMMERCIAL LAW ARTICLE.

1 26-604.

2 (A) THE COMMISSIONER OF FINANCIAL REGULATION MAY ENFORCE THE
3 PROVISIONS OF THIS SUBTITLE BY EXERCISING ANY OF THE POWERS PROVIDED
4 UNDER §§ 2-113 THROUGH 2-116 OF THE FINANCIAL INSTITUTIONS ARTICLE.

5 (B) (1) THE COMMISSIONER OF FINANCIAL REGULATION MAY SEEK AN
6 INJUNCTION TO PROHIBIT A PERSON WHO HAS ENGAGED IN OR IS ENGAGING IN A
7 VIOLATION OF THIS SUBTITLE FROM ENGAGING IN OR CONTINUING TO ENGAGE IN
8 THE VIOLATION.

9 (2) THE COURT MAY ENTER ANY ORDER OR JUDGMENT NECESSARY
10 TO:

11 (I) PREVENT THE USE BY A PERSON OF A PROHIBITED
12 PRACTICE;

13 (II) RESTORE TO A PERSON ANY MONEY OR REAL OR PERSONAL
14 PROPERTY ACQUIRED FROM THE PERSON BY MEANS OF A PROHIBITED PRACTICE;
15 OR

16 (III) APPOINT A RECEIVER IN A CASE OF A WILLFUL VIOLATION
17 OF THIS SUBTITLE.

18 (3) IN ANY ACTION BROUGHT BY THE COMMISSIONER OF FINANCIAL
19 REGULATION UNDER THIS SUBSECTION, THE COMMISSIONER IS ENTITLED TO
20 RECOVER THE COSTS OF THE ACTION FOR THE USE OF THE STATE.

21 (C) THE COMMISSIONER OF FINANCIAL REGULATION MAY ENFORCE THE
22 PROVISIONS OF THIS SUBTITLE BY REQUIRING A VIOLATOR TO TAKE AFFIRMATIVE
23 ACTION TO CORRECT THE VIOLATION, INCLUDING THE RESTITUTION OF MONEY OR
24 PROPERTY TO A PERSON AGGRIEVED BY THE VIOLATION.

25 (D) THE COMMISSIONER OF FINANCIAL REGULATION MAY:

26 (1) INVESTIGATE VIOLATIONS OF THIS SUBTITLE; AND

27 (2) AID ANY OTHER UNIT OF STATE GOVERNMENT THAT HAS
28 REGULATORY JURISDICTION OVER THE BUSINESS ACTIVITIES OF THE VIOLATOR.

29 (E) THE COMMISSIONER OF FINANCIAL REGULATION MAY COOPERATE IN
30 THE INVESTIGATION AND PROSECUTION OF ANY VIOLATION OF THIS SUBTITLE WITH

THE OFFICE OF THE ATTORNEY GENERAL, THE STATE'S ATTORNEY, OR ANY OTHER UNIT OF LAW ENFORCEMENT.

Article – Financial Institutions

2-104.1.

[(h) On or before January 1 each year, the Commissioner shall report to the General Assembly, in accordance with § 2-1246 of the State Government Article, on:

(1) The implementation of the Student Loan Ombudsman and related provisions under this section; and

(2) The overall effectiveness of the Student Loan Ombudsman position.]

(H) THE STUDENT LOAN OMBUDSMAN MAY REFER ANY COMPLAINT FROM STUDENT LOAN BORROWERS TO THE COMMISSIONER FOR INVESTIGATION UNDER § 26-604 OF THE EDUCATION ARTICLE.

11-610.

(c) The purpose of the Fund is to cover the direct and indirect costs of fulfilling the statutory and regulatory duties of the Commissioner and the State Collection Agency Licensing Board related to:

(14) Title 7, Subtitles 1, 3, 4, and 5 of the Real Property Article; [and]

(15) TITLE 26, SUBTITLE 6 OF THE EDUCATION ARTICLE; AND

[(15)](16) Any other expense authorized in the State budget.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2019.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.