

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.



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

17 BY adding to

18 Article – Education

19 Section 26–601 through ~~26–603~~ 26–604 to be under the new subtitle “Subtitle 6.

20 Student Loan Servicers”

21 Annotated Code of Maryland

22 (2018 Replacement Volume and 2018 Supplement)

23 BY repealing

24 Article – Financial Institutions

25 Section 2–104.1(h)

26 Annotated Code of Maryland

27 (2011 Replacement Volume and 2018 Supplement)

28 BY adding to

29 Article – Financial Institutions

30 Section 2–104.1(h) and 11–610(c)(15)

31 Annotated Code of Maryland

32 (2011 Replacement Volume and 2018 Supplement)

33 BY repealing and reenacting, with amendments,

34 Article – Financial Institutions

35 Section 11–610(c)(14) and (15)

36 Annotated Code of Maryland

37 (2011 Replacement Volume and 2018 Supplement)

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

40 **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.~~

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

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

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

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

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

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

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

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

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

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

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

30 (2) “STUDENT LOAN SERVICER” INCLUDES A TRUST ENTITY
31 PERFORMING OR RECEIVING THE BENEFIT OF HAVING THE AUTHORITY TO CONTROL
32 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;

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

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

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

7 **~~(I) A PAYMENT FROM A STUDENT LOAN BORROWER; OR~~**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 26-603.

28 A VIOLATION OF THIS SUBTITLE IS:

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

31 (2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS
32 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**

1 THE OFFICE OF THE ATTORNEY GENERAL, THE STATE’S ATTORNEY, OR ANY OTHER
2 UNIT OF LAW ENFORCEMENT.

3 Article – Financial Institutions

4 2–104.1.

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

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

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

10 (H) THE STUDENT LOAN OMBUDSMAN MAY REFER ANY COMPLAINT FROM
11 STUDENT LOAN BORROWERS TO THE COMMISSIONER FOR INVESTIGATION UNDER §
12 26–604 OF THE EDUCATION ARTICLE.

13 11–610.

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

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

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

19 [(15)](16) Any other expense authorized in the State budget.

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.