



HOUSE BILL 707: Student Borrowers' Bill of Rights.

2021-2022 General Assembly

Committee:	House Education - Universities. If favorable, re-refer to Banking. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	June 24, 2021
Introduced by:	Reps. Hunt, Setzer, Hardister	Prepared by:	Brian Gwyn
Analysis of:	PCS to First Edition H707-CSBEF-31		Committee Co-Counsel

OVERVIEW: *The 1st edition of House Bill 707 would do the following:*

- *Require the Commissioner of Banks to license and regulate student loan servicers.*
- *Establish duties of student loan servicers to borrowers, as well as prohibited conduct.*
- *Create a new Article 9 in Chapter 75 of the General Statutes that would deem certain conduct related to student loans to be an unfair or deceptive trade practice.*
- *Establish the position of the Student Loan Ombudsman.*

The PCS would make the following changes:

- *Exempt student loans that are originated or serviced by exempt entities, unless the loan is sold to a non-exempt entity.*
- *Exempt certain entities from licensing requirements.*
- *Clarify that the licensing provisions do not limit any other unfair and deceptive trade practice claims.*
- *Remove the provision creating Article 9 in Chapter 75 of the General Statutes.*
- *Make various clarifying and technical changes.*

BILL ANALYSIS:

Section 1 would create a new regulatory structure for student loans. Article 26 in Chapter 53 of the General Statutes ("Student Borrowers' Bill of Rights") would do the following:

Define "student loan" as a loan or agreement that is extended to a borrower expressly to finance postsecondary education expenses or other school-related expenses. The following would be specifically excluded:

- Open-ended credit or any loan secured by real property.
- Loans originated by certain exempted entities, except that loans are not excluded during periods in which they are serviced by an entity not exempted.
- Loans serviced by certain exempted entities.

Establish licensing requirements for student loan servicers that would do the following:

- Prohibit student loan servicers from servicing student loans without a license.
- Exempt the following from all provisions of the Student Borrowers' Bill of Rights.

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- A bank, savings bank, credit union, or savings and loan association organized under the laws of any state or the United States (or a wholly owned subsidiary thereof)
- The State or any political subdivision of the State.
- Institutions of higher education, as defined in G.S. 116-143.1.
- College Foundation, Inc.
- Eligible private postsecondary institutions, as defined in G.S. 116-280.
- Organizations that support the work of institutions of higher education or eligible private postsecondary institutions, as defined in IRC Sec. 509(a)(1), (2), or (3).

Establish license application requirements, including:

- Filing an application through the Nationwide Multistate Licensing System and Registry (NMLS).
- Setting criteria by which the Commissioner must evaluation applications.
- Paying a \$1,500 nonrefundable application fee, in addition to the actual cost of obtaining a credit report, federal and State criminal background checks, and the processing fees required by the NMLS.
- Automatically issuing of a license without application and investigation for federal student loan servicing contractors upon written request to and verification by the Commissioner. Federal student loan servicing contractors would still be required to pay required fees.

Require applicants and licensees to maintain a minimum net worth of at least \$250,000, with authorization for the Commissioner to increase the requirement for an applicant or licensee based on certain factors.

Establish surety bond requirements.

Set additional requirements related to license renewal, expiration, cancellation, assignability, and transferability, including:

- Licensees must annually renew student loan servicer license by July 1.
- Licenses expire annually on September 30 unless renewed.
- Licenses cannot be assigned.
- The Commissioner must grant written consent for control of a licensee to be acquired through a stock purchase, merger, or other device.

Require licensees to pay the Commission an annual assessment of \$1 per borrower served and authorize the Commissioner to assess special assessments in certain situations.

Establish duties of licensee to the Commissioner, including:

- Provide notice to the Commissioner within 20 days of certain material events
- Provide corrected information to the Commissioner or the NMLS within 30 days if an existing filing is or becomes inaccurate or incomplete.
- Provide an annual report through the NMLS no later than 90 days after the end of the calendar year.

Establish duties of student loan servicers to borrowers, including:

- Require student loan servicers to initially respond within 10 days to a written inquiry from a borrower or their representative, and provide a more detailed response within 30 days.
- Prohibit student loan servicers from providing information to a consumer reporting agency regarding a disputed payment that is the subject of a written inquiry until after the 60 days following receipt of the

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written inquiry. This requirement would not apply if a student loan servicer is required to communicate that a debt is disputed under 15 U.S.C. 1692e(8).

- Except as otherwise provided in federal law, federal student loan agreements, or a contract between the federal government and a student loan servicers, requires student loan servicers to properly evaluate a borrower for an income-based repayment program, public service loan forgiveness program, or other repayment program before placing the borrower in forbearance or default.

Establish prohibited conduct for student loan servicers, including:

- Directly or indirectly employ a scheme, device, or artifice to defraud or mislead borrowers or the Commissioner.
- Engage in an unfair or deceptive trade practice toward any person or misrepresent or omit any material information in connection with the servicing of a student loan.
- Provide inaccurate information to a consumer reporting agency.
- Communicate with a borrower in any manner designed to harass or intimidate the borrower.
- Violate State or federal privacy laws.

Establish the Commissioner's authority to investigate and examine student loan servicers, including the authority to deny, suspend, revoke, refuse to renew a license, or assess civil penalties if a student loan servicer fails to take certain actions within 20 days.

Generally make confidential any information obtained by the Commissioner.

Establish the procedures governing actions, hearings, and procedures.

Identify the circumstances in which the Commissioner can deny, suspend, revoke, refuse to renew a license, or restrict the manner in which a licensee engages in student loan servicing, such as if the licensee has done or is subject to one of the following:

- Submitted false or misleading information with respect to a material fact.
- Violated any provision of the Article, or any rule or order issued pursuant to the Article.
- Enjoined by a court from engaging in student loan servicing.
- Is the subject of an order entered within the past 5 years by any governmental agency with jurisdiction over the student loan servicing industry.

Authorize the Commission to take the following additional actions against a student loan servicer:

- Assess civil penalties of up to \$25,000 for each violation.
- Order student loan servicers to pay restitution to a borrower injured by a violation.
- Require a student loan servicer to disgorge and repay any amount collected in violation of Chapter 24 of the General Statutes.
- Prohibit student loan servicers from acts or practices that the Commissioner finds to be unfair, deceptive, designed to evade the laws of the State, or not in the best interest of the borrowing public.

Establish a private right of action for borrowers who are injured by a student loan servicer's violation and deem violations to be unfair or deceptive trade practices. However, nothing in this Article could be construed to limit other unfair and deceptive trade practice claims.

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Authorize the Commissioner to adopt any rule deemed necessary and establish a process for appealing rules adopted by the Commissioner.

Require student loan servicers to be licensed through the NMLS, authorize the Commissioner to participate in the NMLS.

Section 2 would create a new Article 27 in Chapter 53 of the General Statutes entitled "Student Loan Ombudsman," which would do the following:

- Require the Commissioner to designate a Student Loan Ombudsman to assist an borrower of a student loan in this State.
- Establish duties for the Student Loan Ombudsman.
- Require the Ombudsman to establish and maintain a student loan borrower education course by July 1, 2023.
- Require the Ombudsman to submit an annual report to the General Assembly on the implementation of the law, the overall effectiveness of the Ombudsman position, and the efficacy of the student loan borrower course.

Section 3 would create a severability clause in the event any provision is held invalid.

EFFECTIVE DATE: Article 26, the Student Borrower's Bill of Rights, would be effective January 1, 2022. Article 27, Student Loan Ombudsman, would be effective July 1, 2022. Except as otherwise provided, the PCS would be effective when it becomes law.