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S.332

Introduced by Senators Parent, Balint, Brock and Hardy

Referred to Committee on

Date:

Subject: Commerce and trade; financial regulation; student loan services

Statement of purpose of bill as introduced: This bill proposes to authorize the Department of Financial Regulation to license and supervise student loan servicers.

An act relating to regulating student loan servicers

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 8 V.S.A. § 2102 is amended to read:

§ 2102. APPLICATION FOR LICENSE

* * *

(b) At the time of making an application, the applicant shall pay to the Commissioner a fee for investigating the application and a license or registration fee for a period terminating on the last day of the current calendar year. The following fees are imposed on applicants:

* * *

1 Sec. 3. 8 V.S.A. chapter 86 is added to read:

2 CHAPTER 86. STUDENT LOAN SERVICERS

3 § 3001. DEFINITIONS

4 As used in this section:

5 (1) “Borrower” means:

6 (A) a resident of this State who receives, agrees to pay, or shares
7 legal responsibility to repay, a student loan; or

8 (B) a person who shares legal responsibility to repay a student loan
9 with a person described in subdivision (1)(A) of this section.

10 (2) “Credit reporting agency” has the same meaning as in 9 V.S.A.
11 § 2480a.

12 (3) “Federal education loan” means a loan made, guaranteed, or insured
13 under Title IV of the federal Higher Education Act of 1965, as amended.

14 (4) “Servicing” means:

15 (A)(i) receiving payments, or notification of payments, on a student
16 loan from a borrower; and

17 (ii) applying payments to the borrower’s account pursuant to the
18 terms of a student loan or of a contract governing the servicing of the student
19 loan;

20 (B) maintaining account records for a student loan;

1 (C) communicating with a borrower regarding a student loan on
2 behalf of an owner or holder of the student loan; or

3 (D) interacting with a borrower, including to help prevent default on
4 obligations arising from a student loan, to facilitate the activities described in
5 this subdivision (4).

6 (5)(A) “Student loan” means a loan used primarily to finance a
7 postsecondary education and costs of attending a postsecondary institution,
8 including tuition, fees, books, supplies, room and board, living expenses,
9 transportation, and other personal expenses.

10 (B) “Student loan” includes a loan made to refinance a student loan
11 described in subdivision (5)(A) of this section or to consolidate such a loan
12 with another loan.

13 (C) “Student loan” does not include a loan under an open-end credit
14 plan, as defined in Regulation Z, 12 C.F.R. § 1026.2, or a loan that is secured
15 by real property, regardless of the purpose for the loan.

16 (6) “Student loan benefits” means the benefits available to a borrower
17 under the terms of a student loan and any agreement governing servicing for
18 the student loan, and includes:

19 (A) all benefits originally represented as being available to a
20 borrower during the repayment of the student loan; and

21 (B) any benefits for which the borrower is not yet qualified.

1 (7) “Student loan servicer” means a person, regardless of location,
2 responsible for servicing a student loan.

3 § 3002. EXCLUSIONS

4 (a) This chapter does not apply to:

5 (1) a depository institution, as defined in section 2101 of this title, or a
6 wholly-owned subsidiary of a depository institution;

7 (2) a public postsecondary institution or a private nonprofit
8 postsecondary institution servicing a student loan it extended to the borrower;

9 (3) the Vermont Student Assistance Corporation or any agency,
10 department, or instrumentality of this State; or

11 (4) the United States or any department, agency, or instrumentality
12 thereof, provided that this chapter applies to a nongovernmental person that
13 performs student loan servicing pursuant to a contract with the United States or
14 any department, agency, or instrumentality thereof.

15 § 3003. STUDENT LOAN OMBUDSPERSON

16 (a) The Commissioner shall designate and support a student loan
17 ombudsperson within the Department to provide timely assistance to
18 borrowers.

19 (b) The student loan ombudsperson, in consultation with the
20 Commissioner, may:

1 (1) receive, review, and attempt to resolve complaints from borrowers,
2 including in collaboration with postsecondary institutions, student loan
3 servicers, and any other participants in student loan lending, including
4 originators servicing their own student loans;

5 (2) compile and analyze data on borrower complaints;

6 (3) assist borrowers in understanding their rights and responsibilities
7 under the terms of student loans;

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

11 (5) disseminate information concerning the availability of the student
12 loan ombudsperson to assist borrowers and potential borrowers, postsecondary
13 institutions, student loan servicers, and any other participants in student loan
14 lending with concerns regarding servicing; and

15 (6) take any other actions necessary or reasonably related to the actions
16 authorized in this subsection.

17 § 3004. LICENSE REQUIRED

18 Except as provided in section 3005 of this title, a person shall not act as a
19 student loan servicer without first obtaining a student loan servicing license
20 from the Commissioner pursuant to the application procedures set forth in
21 section 2102 of this title.

1 § 3005. EXEMPTION; AUTOMATIC LICENSURE

2 (a)(1) A person who performs servicing in this State solely under a contract
3 awarded by the U.S. Secretary of Education pursuant to 20 U.S.C. § 1087f, as
4 amended, is exempt from the application procedures described in subsections
5 2102(a) and 2102(c)–(h) of this title.

6 (2) The Commissioner shall prescribe the procedure to document
7 eligibility for an exemption pursuant to this subsection.

8 (b) With regard to a person who is exempt under subsection (a) of this
9 section:

10 (1) the person is deemed to meet the requirements of section 2103 of
11 this title; and

12 (2) the Commissioner shall:

13 (A) issue a license upon payment of the fees required in subdivision
14 2102(b)(14) of this title; and

15 (B) renew the license upon payment of the fees required in
16 subdivision 2109(a)(14) of this title.

17 (c) A person who is exempt under subsection (a) of this section:

18 (1) may act as a student loan servicer until the contract awarded by the
19 U.S. Secretary of Education expires, or is terminated or revoked;

20 (2) shall provide written notice to the Commissioner not later than seven
21 days after receiving notice of the expiration, revocation, or termination;

1 (3) may continue to act as a student loan servicer for not more than
2 30 days after providing notice to the Commissioner; and

3 (4) after the 30-day period, shall not act as a student loan servicer unless
4 the person obtains a license pursuant to section 3004 of this title.

5 (d) Notwithstanding any provision of law to the contrary, with respect to a
6 person who performs servicing in this State solely under a contract awarded by
7 the U.S. Secretary of Education pursuant to 20 U.S.C. § 1087f, as amended,
8 the Commissioner may:

9 (1) issue an order to temporarily or permanently prohibit that person
10 from acting as a student loan servicer; and

11 (2) issue a cease and desist order or injunction against that person to
12 cease activities in violation of this chapter or 9 V.S.A. § 2453(a).

13 § 3006. APPLICATION FOR LICENSE; ADDITIONAL INFORMATION

14 In addition to the information required by section 2102 of this title, a person
15 who applies for a student loan servicer license pursuant to section 3004 of this
16 title shall provide in its application a current schedule of the ranges and
17 categories of the fees it charges to borrowers for servicing.

18 § 3007. DUTIES OF STUDENT LOAN SERVICERS

19 Except as otherwise provided in federal law, a federal education loan
20 agreement, or a contract between the federal government and a student loan
21 servicer:

1 (1) At the time a student loan servicer obtains the right to service a
2 student loan, the servicer shall disclose in a conspicuous written notice to the
3 borrower:

4 (A) a current schedule of the ranges and categories of the fees it
5 charges to borrowers for servicing;

6 (B) that the servicer is licensed by the Commissioner; and

7 (C) that the borrower may submit complaints about the servicer to the
8 Commissioner.

9 (2) Upon receiving a written inquiry from a borrower, or his or her
10 authorized representative, or the student loan ombudsperson concerning the
11 borrower's account, a student loan servicer shall:

12 (A) within 10 days, acknowledge receipt of the written inquiry; and

13 (B) within 30 days, provide information relating to the inquiry and, if
14 applicable, the action the servicer will take to correct the account or an
15 explanation for its determination that the borrower's account is correct.

16 (3) A student loan servicer shall respond within 15 days to a
17 communication from the student loan ombudsperson or within a shorter
18 reasonable time as the student loan ombudsperson requests in his or her
19 communication.

20 (4) If a student loan servicer receives a written request concerning a
21 dispute over a borrower's payment, the servicer shall not furnish adverse

1 information to a credit reporting agency regarding the disputed payment for
2 60 days.

3 (5) If a borrower makes a payment that exceeds the monthly amount due
4 on the borrower's account, a student loan servicer shall request instruction on
5 how to apply the overpayment to the loan and shall follow the instruction for
6 future overpayments until the borrower provides different instructions.

7 (6)(A) If a borrower makes a payment that is less than the monthly
8 amount due on the borrower's account, a student loan servicer shall apply the
9 partial payment in a manner that minimizes late fees and negative credit
10 reporting.

11 (B) If a borrower has multiple loans on his or her account that are
12 equally delinquent, a student loan servicer shall apply partial payments to
13 satisfy as many individual loan payments on the account as possible.

14 (7) A student loan servicer shall notify a borrower of a delinquency or
15 default not later than 30 days after it occurs.

16 (8) If a sale, assignment, or other transfer of a student loan causes a
17 change in the identity of the person to whom a borrower must send payments
18 or direct communications concerning the loan:

19 (A)(i) A student loan servicer shall require as a condition of the sale,
20 assignment, or transfer that the new student loan servicer honor and preserve
21 the borrower's student loan benefits; or

1 (ii) if the student loan servicer is not also the owner or holder of
2 the student loan, or is not acting on behalf of the owner or holder, the student
3 loan servicer shall provide the information necessary for the new servicer to
4 identify and honor the borrower's student loan benefits.

5 (B)(i) Not later than 45 days after the sale, assignment, or transfer,
6 the student loan servicer shall transfer to the new servicer all records
7 concerning the borrower, the borrower's account, and the borrower's student
8 loan, including records concerning the borrower's repayment status and
9 student loan benefits.

10 (ii) A student loan servicer shall adopt policies and procedures to
11 verify that it has received the records described in this subdivision (B).

12 (C) Not later than seven days before the next payment on the loan is
13 due, the parties shall provide notice of the sale, assignment, or transfer to the
14 borrower, which shall include:

15 (i) the identity and contact information of the new student loan
16 servicer;

17 (ii) the effective date of the sale, assignment, or transfer; and

18 (iii) the date on which the current student loan servicer will no
19 longer accept payments.

20 (D) The new student loan servicer shall honor the borrower's student
21 loan benefits.

1 (9) Upon request of the Commissioner, a student loan servicer shall
2 provide a report concerning its activity in this State that includes:

3 (A) the number, type, and characteristics of the student loans the
4 servicer is servicing;

5 (B) the number of student loans in default, including a breakdown of
6 30-, 60-, and 90-day delinquencies;

7 (C) information concerning the servicer's loss mitigation activities,
8 including the details of the servicer's workout arrangements, if applicable; and

9 (D) other information the Commissioner requests.

10 (10) If a student loan servicer regularly provides information about a
11 borrower to a credit reporting agency, then at least annually, the servicer shall
12 also provide accurate information to the agency concerning both the
13 borrower's favorable and unfavorable payment history.

14 (11) A student loan servicer shall properly evaluate whether a borrower
15 is eligible for an income-based repayment plan, loan forgiveness program, or
16 other student loan repayment plan or program before placing the borrower in
17 forbearance or default.

18 § 3008. PROHIBITED PRACTICES

19 A student loan servicer shall not:

20 (1) defraud, mislead, harass, or intimidate a borrower;

- 1 (2) misrepresent or omit a material fact concerning a student loan or
2 servicing, including the amount, nature, or terms of a fee or payment due, the
3 terms or conditions of a loan agreement, a borrower's payment history, or a
4 borrower's obligations;
- 5 (3) misapply or recklessly apply payments to the outstanding balance of
6 a student loan;
- 7 (4) provide inaccurate information to a credit reporting agency;
- 8 (5) refuse to communicate with an authorized representative of a
9 borrower who provides written proof of authority signed by the borrower,
10 provided that a student loan servicer may adopt reasonable procedures to verify
11 whether a person is authorized to act on behalf of a borrower;
- 12 (6) make a false statement, or misrepresent or omit a material fact,
13 concerning information or reports filed with a State or federal agency, or an
14 investigation or examination conducted by the Commissioner, another state
15 agency, or a federal agency; or
- 16 (7) violate an applicable federal law or regulation, including the federal
17 Consumer Credit Protection Act, 15 U.S.C. chapter 41.

18 Sec. 4. 16 V.S.A. § 2821 is amended to read:

19 § 2821. STUDENT ASSISTANCE CORPORATION; PURPOSE

20 * * *

1 (c) Notwithstanding any general or special law to the contrary, the
2 provisions of 8 V.S.A. ~~chapter 73~~ chapters 73 and 86 shall not apply to the
3 Corporation or to any loan heretofore or hereafter made or serviced by the
4 Corporation in accordance with this title.

5 Sec. 5. EFFECTIVE DATE

6 This act shall take effect on July 1, 2020.