

HOUSE No. 3344

The Commonwealth of Massachusetts

PRESENTED BY:

Denise Andrews

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the rights of student borrowers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Denise Andrews</i>	<i>2nd Franklin</i>	<i>1/17/2013</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>	

HOUSE No. 3344

By Ms. Andrews of Orange, a petition (accompanied by bill, House, No. 3344) of Denise Andrews, Jason M. Lewis and Eileen M. Donoghue for legislation to further define the rights and duties of students and creditors relative to student loans. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to the rights of student borrowers.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 140D of the General Laws is hereby amended by inserting after
2 section 12, the following section:-

3 Section 12A. (A) Except as otherwise expressly provided in this chapter, a creditor of a
4 student loan as defined in section 1 , its officers, employees, agents and directors shall not
5 disclose to any person any financial information relating to a customer. Creditors shall adopt
6 reasonable procedures to assure compliance with this section.

7 (B) This section shall not prohibit any of the activities listed in this section. This section
8 shall not be construed to require any creditor to make any disclosure not otherwise required by
9 law. This section shall not be construed to require or encourage any creditor to alter any
10 procedures or practices not inconsistent with this section. This section shall not be construed to
11 expand or create any authority in any person or entity other than a creditor. The following
12 actions are required:-

13 (1) disclosure of information to the customer after proper identification;

14 (2) disclosure authorized by the customer, provided the disclosure is limited to the scope
15 and purpose that the customer authorizes;

16 (3) disclosure sought by the office of student financial assistance or the health and
17 educational finance authority pursuant to its authority and obligations;

18 (4) the preparation, examination, handling or maintenance of financial records by any
19 officer, employee or agent of a creditor that has custody of the records;

- 20 (5) the examination of financial records by a certified public accountant while engaged
21 by the creditor to perform an independent audit;
- 22 (6) the disclosure of information to a collection agency, its employees or agents, or to any
23 person engaged by the creditor to assist in recovering an amount owed to the creditor, if such
24 disclosure is made in the furtherance of recovering such amount;
- 25 (7) the examination of financial records by, or the disclosure of financial records to, any
26 officer, employee or agent of a regulatory agency for use only in the exercise of that person's
27 duties as an officer, employee or agent;
- 28 (8) the publication of information derived from financial records if the information
29 cannot be identified to any particular customer, deposit or account;
- 30 (9) the making of reports, disclosures or returns required by federal or state law;
- 31 (10) the disclosure of any information permitted to be disclosed under dishonor of
32 negotiable instruments under section 3-502 of chapter 106;
- 33 (11) the exchange, in the regular course of business, of credit information between a
34 creditor and a credit reporting agency, provided such exchange is in compliance chapter 93A,
35 and the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq;
- 36 (12) the exchange, in the regular course of business, of information between a creditor
37 and an account verification service, provided such exchange is in compliance with chapter 93A,
38 and the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq;
- 39 (13) the exchange of loan information that specifically affects a sale, foreclosure or loan
40 closing, provided such exchange is for the purpose of accomplishing such sale, foreclosure or
41 loan closing;
- 42 (14) the disclosure to civil or criminal law enforcement authorities for use in the exercise
43 of such authority's duties, or the sharing of information, within an industry network, of suspected
44 criminal activities;
- 45 (15) disclosures requested pursuant to a summons for trustee process under Rule 4.2 of
46 the Massachusetts rules of civil procedure;
- 47 (16) disclosure requested pursuant to subpoena, provided that no disclosure shall be made
48 until 10 days after the creditor has notified the customer that financial information has been
49 requested by subpoena. Such notice shall be served by first class mail to the customer at the most
50 recent address known to the creditor. The provisions of this clause shall not apply where the
51 subpoena is issued by or on behalf of a regulatory, criminal or civil law enforcement agency;
- 52 (17) disclosure required by order of court;

53 (18) disclosure of customer financial information among directors, officers, employees or
54 agents of affiliated creditors; provided, that such disclosure is limited to information necessary or
55 appropriate to the fulfillment of any such persons' duties and responsibilities to the creditor or
56 institutions; and provided, further, that such disclosure is made in compliance with chapter 93A,
57 and the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq;

58 (19) disclosure of customer financial information of one creditor to another creditor in
59 connection with a proposed merger, consolidation, acquisition or other reorganization transaction
60 involving such institution; provided, that no further disclosure is made except in compliance with
61 this section; and provided, further, that such disclosure is made in compliance with chapter 93A,
62 and the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.

63 (20) disclosure sought by the department of revenue pursuant to its authority and
64 obligations under chapter 14;

65 SECTION 2. Chapter 167E of the General Laws, as appearing in the 2010 Official
66 Edition, is hereby amended by adding the following section:-

67 Section 17. The following words shall in sections 17 to 24, inclusive, unless the context
68 clearly requires otherwise, have the following meanings:

69 “Borrower”, a borrower of a student loan.

70 “Co-signer”, a person who does not hold an ownership interest in the loan but who is
71 liable for repaying the obligation. The co-signer must sign the loan application.

72 “Creditor”, a person or entity that holds or controls, partially, wholly, indirectly, directly,
73 or in a nominee capacity, a student loan, including, without limitation, an originator, holder,
74 investor, assignee, successor, trust, trustee, nominee holder, or loan servicer. “Creditor” shall
75 also include any servant, employee or agent of a creditor.

76 “Creditor’s representative”, a person who has the authority to negotiate the terms of and
77 modify a student loan.

78 “Effective date of transfer”, the date on which the loan payment of a borrower is first due
79 to the transferee servicer of a student loan pursuant to the assignment, sale, or transfer of the
80 servicing of the student loan.

81 “Promissory note”, a legal and binding contract for borrowing containing the terms and
82 conditions of the loan, including responsibilities of the borrower to the loan.

83 “Servicer”, the person responsible for servicing of a loan (including the person who
84 makes or holds a loan if such person also services the loan).

85 “Servicing”, receiving any scheduled periodic payments from a borrower pursuant to the
86 terms of any loan.

87 “Student loan”, a loan made to a student or a student and his or her co-signer for qualified
88 educational purposes.

89 “Student loan servicer”, a person who directly or indirectly acts as a student loan servicer,
90 who is a servicer, with respect to private student loans or is a servicer of any private student loan
91 in the commonwealth.

92

93 SECTION 3. Said chapter 167E is hereby further amended by adding the following
94 section:-

95 Section 18. There shall be a private student loan commission consisting of 19 members
96 as follows: the undersecretary of consumer affairs and business regulation, or a designee, who
97 shall serve as chair; the attorney general, or a designee; the state auditor, or a designee; the
98 secretary of education, or a designee; the commissioner of banks, or a designee; the house chair
99 of the joint committee on consumer protection and professional licensure, or a designee; the
100 house chair of the joint committee on higher education, or a designee; the senate chair of the
101 joint committee on consumer protection and professional licensure, or a designee; the senate
102 chair of the joint committee on higher education, or a designee; the minority leader of the house,
103 or a designee; the minority leader of the senate, or a designee; and 8 members appointed by the
104 governor: 1 of whom shall have expertise in federal, state and private student loans, and other
105 student financial aid programs, 1 of whom shall be a person who was enrolled or is currently
106 enrolled in a college or university in Massachusetts, 1 of whom shall represent public and for-
107 profit colleges, universities, and proprietary schools, 1 of whom shall represent the Crittenton
108 Women’s Union, 1 of whom shall represent a student loan borrowers advocacy group, and 1 of
109 whom shall represent a consumer protection group.

110 The commission shall study and make recommendations based on the information that it
111 gathers regarding the impact of private student loans on residents of the commonwealth.

112 The commission shall specifically study and make recommendations on the following:
113 (a) the need for improved enforcement or changes to relevant Massachusetts criminal and
114 consumer protection laws, including, but not limited to, the areas of credit transfer practices; (b)
115 the need for new criminal or civil laws to deter deceptive or fraudulent acts by private student
116 loan originators and provide relief to victims; (c) the adequacy of free or low-cost loan
117 counseling and legal support for residents of the state in default on student loans; (d) the need for
118 increased consumer education about private student loans and the financial responsibilities
119 associated with private student loans; (e) the need for greater transparency regarding compliance
120 with state and federal laws, loan default rates;

121 The commission shall report the results of its investigation and its recommendations, if
122 any, to the general court. Drafts of any legislation necessary to carry out its recommendations
123 shall be filed with the clerk of the house of representatives no later than 18 months after the
124 passage of this act.

125 SECTION 4. Said chapter 167E is hereby further amended by adding the following
126 section:—Section 19. Banks and lending institutions shall issue annual statements to their
127 student loan customers and co-signers which include, but are not limited to, the following
128 information: the balance of principal remaining to be paid; the most current interest rate available
129 for the amount of principal remaining on said loan at the time such loan statement is printed; and
130 a confirmation of the payments received in the past 12 months; the estimated date at which the
131 balance of principal will be paid;

132 SECTION 5. Said chapter 167E is hereby further amended by adding the following
133 section:- Section 20. Except as otherwise provided in this chapter, or any rule or regulation
134 issued thereunder, any civil action for a violation of this chapter, or proceeding under section 6
135 which may be brought against a creditor may be maintained against any voluntary assignee of
136 such creditor. The applicable standard of review of any claims brought by a borrower in any civil
137 action under this chapter shall be to consider the borrower’s claims under a “least sophisticated
138 consumer” standard in accordance with the Fair Debt Collection Practices Act at 15 U.S.C. 1692,
139 et seq.

140 SECTION 6. Chapter 167E of the general laws, as appearing in the 2010 Official
141 Edition, is hereby amended by adding the following section at the end:-

142 Section 21. A student loan servicer, doing business in the commonwealth, shall provide
143 to a borrower or co-signer of a student loan, the name, address, toll-free telephone number and
144 facsimile number of the servicer for (i) an individual employed by the student loan servicer, or
145 (ii) the department of the student loan servicer, that can be contacted by the borrower to answer
146 inquiries relating to the servicing of such loan. Such contact or department shall be available for
147 contact by the debtor no less than 40 hours per week from Monday through Saturday, inclusive.

148 SECTION 7. Said chapter 167E is hereby further amended by adding the following
149 section:-

150 Section 22. (a) A lender shall not knowingly make a student loan if the student loan pays
151 off all or part of an existing student loan that was consummated within the prior 60 months or
152 other debt of the borrower, unless the refinancing is in the borrower’s interest. The “borrower’s
153 interest” standard shall be narrowly construed, and the burden is upon the lender to determine
154 and to demonstrate that the refinancing is in the borrower’s interest.

155 Factors to be considered in determining if the refinancing is in the borrower’s interest
156 include but are not limited to:—

- 157 (1) if the borrower's new monthly payment is lower than the total of all monthly
158 obligations being financed, taking into account the costs and fees;
- 159 (2) if there is a change in the amortization period of the new loan;
- 160 (3) if the borrower's note rate of interest is reduced;
- 161 (4) if there is a change from an adjustable to a fixed rate loan, taking into account costs
162 and fees; or
- 163 (5) the refinancing is necessary to respond to a bona fide personal need or an order of a
164 court of competent jurisdiction.

165 (b) Notwithstanding any provision to the contrary contained in this chapter regarding
166 costs and attorneys' fees, in any action instituted by a borrower who alleges that the defendant
167 violated subsection (a), the borrower shall not be entitled to costs and attorneys' fees if the
168 presiding judge, in the judge's discretion, finds that, before the institution of the action by the
169 borrower, the lender made a reasonable offer to cure and that offer was rejected by the borrower.

170 (c) The commissioner of banks may prescribe from time to time such rules and
171 regulations as may be necessary or proper in carrying out this section. Such rules and regulations
172 may contain such factors, classifications, differentiations or other provisions, and may provide
173 for such adjustments and exceptions for any class of transactions as, in the judgment of the
174 commissioner, are necessary or proper to carry out this section, to prevent circumvention or
175 evasion thereof or to facilitate compliance therewith.

176 SECTION 8. Said chapter 167E is hereby further amended by adding the following
177 section:-Section 23. The office of consumer affairs and business regulation shall promulgate
178 rules and regulations to establish a student borrower's bill of rights to ensure simplicity,
179 transparency, and fairness in private student loans made to student borrowers and co-signers.
180 Such rules shall include the following:—

181 (a) A third party loan servicer may not use unfair or unconscionable means in
182 servicing any private student loan.

183 (b) Promptly accept and apply all borrower payments, including non-conforming
184 payments, cure payments (where authorized by law or contract), and trial modification payments.

185 (c) Upon request the borrower on a promissory note, or an co-signer on behalf
186 thereof, a lender, loan servicer or note holder who is receiving payments under a promissory note
187 or other financial obligation shall provide a written payoff statement sufficient to enable the
188 borrower or the co-signer to conclusively make full payment of the outstanding indebtedness
189 under the promissory note or other financial obligation as of a certain payment date, which shall
190 be specified in the request and which shall be no more than 30 days from the date of the request.

191 The payoff request shall be made in writing but the writing may be provided by facsimile
192 or other electronic forms of transmission as may be requested or authorized by the party from
193 whom the payoff is being requested.

194 The payoff statement shall be provided to the requesting party within 5 business days of
195 receipt of the request and shall be in written form transmitted to the requesting party by such
196 means as shall ensure receipt by the requesting party within such time period, including facsimile
197 or other electronic transmission, if the request contained the telephone numbers, mailing
198 addresses, electronic mail addresses or other information necessary to enable the provider of the
199 payoff statement to respond within such time period. If only a mailing address is provided, the
200 transmittal of the payoff statement need only be mailed and postmarked within such time period,
201 unless overnight delivery is requested of or chosen by the provider of the payoff statement, in
202 which case the provider of the payoff statement shall deliver the payoff statement to an overnight
203 delivery service within such time period. Unless prohibited by law or the respective loan
204 documents, the payoff statement provider may charge a reasonable fee for the cost of delivery of
205 the payoff statement and the fee may be added to the payoff amount.

206 The payoff statement shall specify an amount certain, as of the payment date specified in
207 the payoff request, that will pay off any and all indebtedness secured by the loan, if the
208 requesting party so indicates.

209 (d) A lender, loan servicer or promissory note holder who fails without reasonable
210 cause to provide a timely payoff statement as required by this section shall be liable to the
211 borrower for the greater of \$500 or the borrower's actual damages caused by the failure, plus
212 reasonable attorney's fees and costs.

213 (e) A third party loan servicer shall, evaluate borrowers for all available loss
214 mitigation options prior to default, communicate such options to the borrower, and attempt a
215 resolution or workout of the delinquency, including a loan modification.

216 (f) A third party loan servicer shall provide to a borrower written acknowledgment of
217 documentation submitted by the borrower in connection with a loan modification application
218 within three (3) business days of receipt thereof. In the written acknowledgment, the third party
219 loan servicer shall also include a list of any additional documents required and shall identify
220 deadlines for submission of such documents.

221
222 (g) A third party loan servicer shall not refer or initiate default proceedings while a
223 good faith loan modification program or proprietary trial modification evaluation is in process or
224 the borrower's application for any loss mitigation program is pending. A third party loan servicer
225 shall not initiate default proceedings until the borrower has received written denial of all
226 applicable loss mitigation programs and all applicable appeal periods have expired.

227 (h) A third party loan servicer shall provide borrowers with contact information for a
228 designated employee(s) with primary responsibility to handle all loss mitigation communications
229 with such borrower. The contact information shall include at least 1 toll free telephone number
230 for direct communication with a loss mitigation staff person, at least 1 fax number for receipt of
231 documents, and an e-mail address.

232 (i) Nothing in this section shall be construed to prevent a third party loan servicer
233 from offering or accepting alternative loss mitigation options, including other modification
234 programs offered by the third party loan servicer, or forbearance, if the borrower requests such
235 an alternative, is not eligible for or does not qualify for a loan modification under loan
236 modification program or proprietary modification program, or rejects the third party loan
237 servicer's loss mitigation proposal.

238 (j) A third party loan servicer shall ensure that all default affidavits or sworn
239 statements are based on personal knowledge.

240 (k) A third party loan servicer shall ensure that default affidavits or sworn statements
241 shall set forth a detailed description of the basis of affiant's claimed personal knowledge of
242 information contained in the affidavit or sworn statement, including sources of all information
243 recited and a statement as to why the sources are accurate and reliable.

244 (l) The third party loan servicer shall provide such certification to the borrower with
245 the notice of default, and shall include a copy of the promissory note with all required
246 endorsements.

247 (m) An agreement of the parties in a payment installment contract defining default is
248 enforceable only to the extent that the default is material and consists of the borrower's failure to
249 make one or more installments as required by the agreement;

250 (n) A borrower of student loans shall have a 150-day right to cure a default of a
251 required payment by full payment of all amounts that are due without acceleration of the
252 maturity of the unpaid balance of the student loan; provided, however, that if a creditor certifies
253 that: (i) it has engaged in a good faith effort to negotiate a commercially reasonable alternative to
254 default as described in subsection (c); (ii) its good faith effort has involved at least 1 meeting,
255 either in person or by telephone, between a creditor's representative and the borrower, the
256 borrower's attorney or the borrower's representative; and (iii) after such meeting the borrower
257 and the creditor were not successful in resolving their dispute, then the creditor may begin
258 default proceedings after a right to cure period lasting 90 days. A borrower who fails to respond
259 within 30 days to any mailed communications offering to negotiate a commercially reasonable
260 alternative to default sent via certified and first class mail or similar service by a private carrier
261 from the lender shall be deemed to have forfeited the right to a 150-day right to cure period and
262 shall be subject to a right to cure period lasting 90 days. The right to cure a default of a required

263 payment shall be granted at least once during any 3 year period, regardless of student loan
264 holder.

265 (o) For purposes of this section, a determination that a creditor has made a good faith
266 effort to negotiate and agree upon a commercially reasonable alternative to default shall mean
267 that the creditor has considered: (i) an assessment of the borrower's current circumstances
268 including, without limitation, the borrower's current income, debts and obligations; (ii) the
269 interests of the creditor; provided, however, that nothing in this subsection shall be construed as
270 prohibiting a creditor from considering other factors; provided, further, that the creditor shall
271 provide by first class and certified mail or similar service by a private carrier to a borrower
272 documentation of good faith effort 10 days prior to meeting, telephone conversation or a meeting
273 pursuant to subsection (b).

274 (p) A borrower who receives a loan modification offer from the creditor resulting
275 from the lender's good faith effort to negotiate and agree upon a commercially reasonable
276 alternative to default shall respond within 30 days of receipt of first class or certified mail. A
277 borrower shall be presumed to have responded if the borrower provides: (i) confirmation of a
278 facsimile transmission to the creditor; (ii) proof of delivery through the United States Postal
279 Service or similar carrier; or (iii) record of telephone call to the creditor captured on a telephone
280 bill or pin register. A borrower who fails to respond to the creditor's offer within 30 days of
281 receipt of a loan modification offer shall be deemed to have forfeited the 150-day right to cure
282 period and shall be subject to a right to cure period lasting 90 days.

283 (q) Nothing in this section shall prevent a creditor from offering or accepting
284 alternatives to default, such as a loan modification or consolidation, if the borrower requests such
285 alternatives, rejects a loan modification offered pursuant to this subsection or does not qualify for
286 a loan modification pursuant to this subsection.

287 (r) A creditor that chooses to begin default proceedings after a right to cure period
288 lasting less than 150 days that engaged in a good faith effort to negotiate and agree upon a
289 commercially reasonable alternative but was not successful in resolving the dispute shall certify
290 compliance with this section in an affidavit. The affidavit shall include the time and place of the
291 meeting, parties participating, relief offered to the borrower, a summary of the creditor's net
292 present value analysis and applicable inputs of the analysis and certification that any
293 modification or option offered complies with current federal law or policy. A creditor shall
294 provide a copy of the affidavit to the borrower.

295 (s) The lender, or anyone holding thereunder, shall not accelerate maturity of the
296 unpaid balance of such student loan obligation or otherwise enforce the loan because of a default
297 consisting of the borrower's failure to make any such payment in subsection (b) by any method
298 authorized by this chapter or any other law until at least 150 days after the date a written notice is
299 given by the lender to the borrower; provided, however, that a creditor meeting the requirements

300 of subsection (b) that chooses to begin default proceedings after a right to cure period lasting less
301 than 150 days may accelerate maturity of the unpaid balance of such student loan obligation or
302 otherwise enforce the student loan because of a default consisting of the borrower's failure to
303 make any such payment in subsection (b) by any method authorized by this chapter or any other
304 law not less than 91 days after the date a written notice is given by the creditor to the borrower.

305 Said notice shall be deemed to be delivered to the borrower: (i) when delivered by hand
306 to the borrower; or (ii) when sent by first class mail and certified mail or similar service by a
307 private carrier to the borrower at the borrower's address last known to the lender and anyone
308 holding thereunder.

309 (t) The notice required in subsection (g) shall inform the borrower of the
310 following:—

311 After a default by a borrower under a payment agreement, the secured creditor may not
312 bring an action against the borrower until creditor gives the borrower the notice described in this
313 section. The notice so required shall be deemed to be delivered when delivered to the debtor or
314 when mailed to the debtor at the debtor's address last known to the creditor. If a borrower cures a
315 default after receiving notice and again defaults, the creditor shall give another notice before
316 bringing an action with respect to the subsequent default, but no notice is required in connection
317 with a subsequent default if, within the period commencing on the date of the payment
318 agreement subject to this section and the date of the subsequent default, the debtor has cured a
319 default after notice three or more times.

320 (u) The notice shall be in writing and shall be given to the borrower ten days or more
321 after the default. The notice shall conspicuously state the rights of the borrower upon default in
322 substantially the following form:—

323 The heading shall read:—"Rights of Defaulting Borrower under the Massachusetts
324 Student Borrower Rights Act."

325 The body of the notice shall read:—"You may cure your default in (describe transaction
326 in a manner enabling borrower to identify it) by paying to (name and address of creditor)
327 (amount due) before (date which is at twenty-one days after notice is mailed). If you pay this
328 amount within the time allowed, you are no longer in default and may continue with the
329 transaction as though no default had occurred.

330 If you do not cure your default by the date stated above, the said creditor may sue you to
331 obtain a judgment for the amount of the debt."

332 The nature of the default claimed on such student loan and of the borrower's right to cure
333 the default by paying the sum of money required to cure the default;

334 The date by which the borrower shall cure the default to avoid acceleration, which date
335 shall not be less than 150 days after service of the notice and the name, address and local or toll
336 free telephone number of a person to whom the payment or tender shall be made unless a
337 creditor chooses to begin default proceedings after a right to cure period lasting less than 150
338 days that engaged in a good faith effort to negotiate and agree upon a commercially reasonable
339 alternative but was not successful in resolving the dispute, in which case a default may take place
340 on an earlier date to be specified;

341 The name and address of the lender, or anyone holding thereunder, and the telephone
342 number of a representative of the lender whom the borrower may contact if the borrower
343 disagrees with the lender's assertion that a default has occurred or the correctness of the lender's
344 calculation of the amount required to cure the default;

345 The name of any current and former servicer or loan originator for such student loan or
346 promissory note; and

347 The borrower may have the following additional rights, depending on the terms of the
348 student loan: (i) to refinance the obligation by obtaining a loan which would fully repay the
349 lender;

350 The notice shall also include a declaration, in the language the creditor has regularly used
351 in its communication with the borrower, appearing on the first page of the notice stating: "This is
352 an important notice concerning your private student loan. Have it translated at once."

353 (v) During the 21 day period after delivery of the notice required by this section the
354 creditor may not because of that default accelerate the unpaid balance of the obligation, bring
355 action against the borrower, or co-signer.

356 (w) Unless the secured creditor has first notified the buyer that the creditor has elected
357 to accelerate the unpaid balance of the obligation because of default, or brought action against
358 the borrower, the borrower may cure a default consisting of a failure to pay money by tendering
359 the amount of all unpaid sums due at the time of tender, without acceleration, plus any unpaid
360 delinquency or deferral charges. Such a cure shall restore the buyer to his rights under the
361 agreement as though the defaults had not occurred subject to the provisions of subsection (b).

362 (x) The lender, or anyone holding thereunder, shall not accelerate maturity of the
363 unpaid balance of such student loan obligation or otherwise enforce the loan because of a default
364 consisting of the borrower's failure to make any such payment in subsection (a) if the ability to
365 repay is changed by either the death or permanent disability of either the borrower or co-signer.
366 Should the borrower or co-signer die or become permanently disabled the obligation to repay
367 shall remain with the surviving party as per established payment arrangements, notwithstanding
368 the ability to satisfy the debt by early payoff.

369 SECTION 9. Said chapter 167E is hereby further amended by inserting the following
370 section:-

371 Section 24. The division of banks shall adopt regulations in accordance with this
372 subsection.

373 (a) To cure a default prior to acceleration under this section, a borrower shall not be
374 required to pay any charge, fee or penalty attributable to the exercise of the right to cure a
375 default. The borrower shall pay late fees as allowed pursuant to section 59 of chapter 183 and
376 per-diem interest to cure such default. The lender shall not be liable for any attorneys' fees
377 relating to the borrower's default that are incurred by the lender or anyone holding thereunder
378 prior to or during the period set forth in the notice required by this section.

379 (b) Each lender who makes a private student loan shall disclose to each person who
380 applies for the loan, at the time of application for the loan, whether the servicing of the loan may
381 be assigned, sold, or transferred to any other person at any time while the loan is outstanding.

382 (c) Each servicer of any private student loan shall notify the borrower in writing of any
383 assignment, sale, or transfer of the servicing of the loan to any other person.

384 (d) Except as provided under subparagraph (e), the notice required under subsection
385 (c) shall be made to the borrower not less than 15 days before the effective date of transfer of the
386 servicing of the student loan (with respect to which such notice is made).

387 (e) The notice required under paragraph (1) shall be made to the borrower not more than
388 30 days after the effective date of assignment, sale, or transfer of the servicing of the student loan
389 (with respect to which such notice is made) in any case in which the assignment, sale, or transfer
390 of the servicing of the student loan is preceded by:

391 (i) termination of the contract for servicing the loan for cause;

392 (ii) commencement of proceedings for bankruptcy of the servicer; or

393 (iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the
394 Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by
395 which the servicer is owned or controlled).

396 (2) The notice required under subsection (c) shall include the following information:

397 (A) The effective date of transfer of the servicing described in such paragraph.

398 (B) The name, address, and toll-free or collect call telephone number of the transferee
399 servicer.

400 (C) A toll-free or collect call telephone number for

401 (i) an individual employed by the transferor servicer, or
402 (ii) the department of the transferor servicer, that can be contacted by the borrower to
403 answer inquiries relating to the transfer of servicing.

404 (D) The name and toll-free or collect call telephone number for

405 (i) an individual employed by the transferee servicer, or
406 (ii) the department of the transferee servicer, that can be contacted by the borrower to
407 answer inquiries relating to the transfer of servicing.

408 (E) The date on which the transferor servicer who is servicing the student loan before the
409 assignment, sale, or transfer will cease to accept payments relating to the loan and the date on
410 which the transferee servicer will begin to accept such payments.

411 (F) Any information concerning the effect the transfer may have, if any, on the terms of
412 or the continued availability of discharge terms.

413 (G) A statement that the assignment, sale, or transfer of the servicing of the student loan
414 does not affect any term or condition of the security instruments other than terms directly related
415 to the servicing of such loan.

416 (e) Notice by transferee of loan servicing at time of transfer

417 (1) Each transferee servicer to whom the servicing of any student loan is assigned, sold,
418 or transferred shall notify the borrower of any such assignment, sale, or transfer.

419 (2) (A) Except as provided in subparagraphs (B) and (C), the notice required under
420 paragraph (1) shall be made to the borrower not more than 15 days after the effective date of
421 transfer of the servicing of the student loan (with respect to which such notice is made).

422 (B) The notice required under paragraph (1) shall be made to the borrower not more than
423 30 days after the effective date of assignment, sale, or transfer of the servicing of the student loan
424 (with respect to which such notice is made) in any case in which the assignment, sale, or transfer
425 of the servicing of the student loan is preceded by—

426 (i) termination of the contract for servicing the loan for cause;

427 (ii) commencement of proceedings for bankruptcy of the servicer; or

428 (iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the
429 Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by
430 which the servicer is owned or controlled).

431 (C) If any servicer of a student loan receives a qualified written request from the
432 borrower (or an agent of the borrower) for information relating to the servicing of such loan, the
433 servicer shall provide a written response acknowledging receipt of the correspondence within 20
434 days (excluding legal public holidays, Saturdays, and Sundays) unless the action requested is
435 taken within such period.

436 (D) For purposes of this subsection, a qualified written request shall be a written
437 correspondence, other than notice on a payment coupon or other payment medium supplied by
438 the servicer, that—

439 (i) includes, or otherwise enables the servicer to identify, the name and account of the
440 borrower; and

441 (ii) includes a statement of the reasons for the belief of the borrower, to the extent
442 applicable, that the account is in error or provides sufficient detail to the servicer regarding other
443 information sought by the borrower.

444 (E) Not later than 60 days (excluding legal public holidays, Saturdays, and Sundays) after
445 the receipt from any borrower of any qualified written request under subsection (c) and, if
446 applicable, before taking any action with respect to an inquiry of the borrower, the servicer
447 shall—

448 (F) make appropriate corrections in the account of the borrower, including the crediting
449 of any late charges or penalties, and transmit to the borrower a written notification of such
450 correction (which shall include the name and telephone number of a representative of the
451 servicer who can provide assistance to the borrower);

452 (G) after conducting an investigation, provide the borrower with a written explanation or
453 clarification that includes—

454 (i) to the extent applicable, a statement of the reasons for which the servicer believes the
455 account of the borrower is correct as determined by the servicer; and

456 (ii) the name and telephone number of an individual employed by, or the office or
457 department of, the servicer who can provide assistance to the borrower; or

458 (H) after conducting an investigation, provide the borrower with a written explanation or
459 clarification that includes—

460 (i) information requested by the borrower or an explanation of why the information
461 requested is unavailable or cannot be obtained by the servicer; and

462 (ii) the name and telephone number of an individual employed by, or the office or
463 department of, the servicer who can provide assistance to the borrower.

464 (I) During the 60-day period beginning on the date of the servicer's receipt from any
465 borrower of a qualified written request relating to a dispute regarding the borrower's payments, a
466 servicer may not provide information regarding any overdue payment, owed by such borrower
467 and relating to such period or qualified written request, to any consumer reporting agency.

468 SECTION 10. Chapter 183 of the General Laws is hereby amended by striking out
469 section 59 and inserting place thereof the following section:-

470 Section 59. A servicer or creditor shall not require the borrower to pay a late charge or
471 late payment penalty unless the penalty is specifically authorized in the promissory note.

472 A servicer or creditor, shall not require the borrower to pay a penalty or late charge for
473 any payment paid within 15 days from the date the payment is due.

474 In no event, in assessing a penalty because of the delinquency in making all or any part of
475 a periodic payment under a promissory note, shall the penalty or late charge exceed 3 per cent of
476 the amount of principal and interest overdue.

477 A late payment penalty or late charge may not be charged more than once with respect to
478 a single late payment. If a late payment fee is deducted from a payment made on the loan, and
479 the deduction causes a subsequent default on a subsequent payment, no late payment fee may be
480 imposed for the default. If a late payment fee has been once imposed with respect to a particular
481 late payment, a fee shall not be imposed with respect to any future payment which would have
482 been timely and sufficient, but for the previous default.