

SENATE No. 129

The Commonwealth of Massachusetts

PRESENTED BY:

Eric P. Lesser

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 establishing a student loan bill of rights.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	
<i>Julian Cyr</i>	<i>Cape and Islands</i>	
<i>Jack Lewis</i>	<i>7th Middlesex</i>	<i>1/23/2017</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/30/2017</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>1/31/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/31/2017</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>2/2/2017</i>
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>	<i>2/2/2017</i>
<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>	<i>2/3/2017</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>2/3/2017</i>
<i>Dylan Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>9/22/2017</i>
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	<i>10/3/2017</i>

SENATE No. 129

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act establishing a student loan bill of rights.

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. Section 24 of chapter 93 of the General Laws, as so appearing, is hereby
2 amended by striking the definition of “servicing” and inserting thereof the following definition:-

3 “Servicing”, receiving a scheduled periodic payment from a borrower pursuant to the
4 terms of a loan, including amounts for escrow accounts, and making the payments to the owner
5 of the loan or other third party of principal and interest and other payments with respect to the
6 amounts received from the borrower as may be required pursuant to the terms of the servicing
7 loan document or servicing contract. In the case of a home equity conversion mortgage or
8 reverse mortgage as referenced in this section, servicing includes making payments to the
9 borrower. In the case of a student education loan as referenced in this section, servicing includes
10 applying the payments of principal and interest and other such payments with respect to the
11 amounts received from a student loan borrower as may be required pursuant to the terms of a
12 student education loan and performing other administrative services with respect to a student
13 education loan.

14 SECTION 2. Section 24 of chapter 93 of the General Laws, as so appearing, is hereby
15 amended by inserting after the definition of “ Servicing” the following definitions:-

16 “Student education loan”, any loan primarily used to finance education or other school-
17 related expenses.

18 “Student loan borrower”, any resident of Massachusetts who has received or agreed to
19 pay a student education loan, or any person who shares responsibility with such Massachusetts
20 resident for repaying the student education loan.

21 “Student loan servicer”, any person responsible for the servicing of a student education
22 loan to a student loan borrower.

23 SECTION 3. Section 24A of Chapter 93 of the General Laws, as so appearing, is hereby
24 amended by adding at the end of subsection (b) the following sentence:- “A student loan
25 servicer who also acts as a third party loan servicer shall also be required to comply with sections
26 24M to 24O, inclusive.

27 SECTION 4. Chapter 93 of the General Laws, as so appearing, is hereby amended by
28 inserting after section 24K the following sections:-

29 Section 24L. (a) There is hereby established the position of the Student Loan
30 Ombudsman, within the Division of Banks, to be appointed by the commissioner to provide
31 timely assistance to any student loan borrower who has a student education loan.

32 (b) The Student Loan Ombudsman shall work in consultation with the commissioner. The
33 responsibilities of the Student Loan Ombudsman will include, but not be limited to: (1) receive,
34 review and assist in resolving complaints from student loan borrowers, including, but not limited

35 to, attempts to resolve such complaints in collaboration with institutions of higher education,
36 student loan servicers, and any other participants in student loan lending, including, but not
37 limited to, the University of Massachusetts, the Board of Higher Education, the Office of Higher
38 Education, The Massachusetts Educational Financing Agency, or the Massachusetts Student
39 Loan Authority; (2) compile and analyze data on student loan borrower complaints and any
40 subsequent resolutions; (3) assist student loan borrowers to understand their rights and
41 responsibilities under the terms of student education loans; (4) provide information to the public
42 regarding the problems and concerns of student loan borrowers; (5) make recommendations to
43 the commissioner for resolving those problems and concerns; (6) analyze and monitor the
44 development and implementation of federal, state and local laws, regulations and policies
45 relating to student loan borrowers and recommend any related changes deemed necessary; (7)
46 review complete student education loan history for any student loan borrower who has provided
47 written consent for such review; and (8) disseminate information to student loan borrowers,
48 potential student loan borrowers, public institutions of higher education, student loan servicers
49 and any other participant in student education loan lending.

50 (c) The Student Loan Ombudsman, in consultation with the commissioner, shall establish
51 and a student loan borrower education course to include educational presentations and materials
52 regarding student education loans. Said program shall include, but not be limited to, an
53 explanation of key loan terms, prescribed documentation requirements, monthly payment
54 obligations, income-based repayment options, loan forgiveness and disclosure requirements. Any
55 license, renewal, late filing, or investigation fees, as well as any penalties assessed under this
56 section, shall be used to fund the student loan borrower education course.

57 Section 24M. (a) No person or entity shall act as a student loan servicer, directly or
58 indirectly, without first obtaining a license from the commissioner, unless such person is exempt
59 from licensure pursuant to this this section.

60 (b) The following persons or entities are exempt from student loan servicer licensing
61 requirements: (1) any bank, out-of-state bank, Massachusetts credit union, federal credit union or
62 out-of-state credit union; (2) any wholly owned subsidiary of any such bank or credit union; and
63 (c) any operating subsidiary where each owner of such operating subsidiary is wholly owned by
64 the same bank or credit union.

65 (c) Any person or entity seeking to act within Massachusetts as a student loan servicer
66 shall submit a written application to the commissioner for a license in such form as the
67 commissioner prescribes. The application for a license shall be accompanied by a \$1000
68 nonrefundable license fee and an investigation fee to be determined annually by the
69 commissioner of administration under section 3B of chapter 7. The commissioner may require a
70 financial statement prepared by a certified public accountant or a public accountant, a history of
71 criminal convictions of the applicant or any other information deemed necessary.

72 (d) Upon the filing of an application for an initial license and the payment of the fees for
73 license and investigation, the commissioner shall investigate the financial condition and
74 responsibility, financial and business experience, character and general fitness of the applicant.
75 The commissioner may issue a license if the commissioner finds that: (1) the applicant's financial
76 condition is sound; (2) the applicant's business will be conducted honestly, fairly, equitably,
77 carefully and efficiently within the purposes and intent of this act; (3) (A) if the applicant is an
78 individual, such individual is in all respects properly qualified and of good character, (B) if the

79 applicant is a partnership, each partner is in all respects properly qualified and of good character,
80 (C) if the applicant is a corporation or association, the president, chairperson of the executive
81 committee, senior officer responsible for the corporation's business and chief financial officer or
82 any other person who performs similar functions as determined by the commissioner, each
83 director, each trustee and each shareholder owning ten per cent or more of each class of the
84 securities of such corporation is in all respects properly qualified and of good character, or (D) if
85 the applicant is a limited liability company, each member is in all respects properly qualified and
86 of good character; (4) no person on behalf of the applicant has knowingly made any incorrect
87 statement of a material fact in the application, or in any report or statement made pursuant to this
88 act; (5) no person on behalf of the applicant knowingly has omitted to state any material fact
89 necessary to give the commissioner any information lawfully required by the commissioner; (6)
90 the applicant has paid the investigation fee and the license fee required under subsection (b) of
91 this section; and (7) the applicant has met any other requirements as determined by the
92 commissioner.

93 (e) A license shall be for a period of 1 year as of a date determined by the commissioner
94 and shall expire unless renewed, suspended or revoked pursuant to this act.

95 Not later than fifteen days after a licensee ceases to engage in the business of student loan
96 servicing in Massachusetts for any reason, including a business decision to terminate operations
97 in this state, license revocation, bankruptcy or voluntary dissolution, said licensee shall provide
98 written notice of surrender to the commissioner and shall surrender to the commissioner said
99 license for each location in which such licensee has ceased to engage in such business.

100 A written notice of surrender shall identify the location where the records of the licensee
101 will be stored and the name, address and telephone number of an individual authorized to
102 provide access to the records. The surrender of a license does not reduce or eliminate the
103 licensee's civil or criminal liability arising from acts or omissions occurring prior to the
104 surrender of the license.

105 (f) A license may be renewed for the ensuing one year period upon the filing of an
106 application containing all required documents and fees as provided in subsection (c) of this
107 section. A renewal application shall be filed at least 30 days prior to the date the license expires.
108 The commissioner may assess a late fee for renewal applications filed within 30 days of license
109 expiration. If an application for a renewal license has been filed with the commissioner on or
110 before the date the license expires, the license sought to be renewed shall continue in full force
111 and effect until the issuance by the commissioner of the renewal license or until the
112 commissioner has notified the licensee in writing of the commissioner's refusal to issue such
113 renewal license together with the grounds upon which such refusal is based. The commissioner
114 may refuse to issue a renewal license on any ground on which the commissioner might refuse to
115 issue an initial license.

116 (g) If the commissioner determines that a check filed with the commissioner to pay a
117 license or renewal fee has been dishonored, the commissioner shall automatically suspend the
118 license. The commissioner shall notify the licensee in writing of the automatic suspension
119 pending proceedings for revocation or refusal to renew and an opportunity for a hearing on such
120 actions.

121 (h) The commissioner may deem an application for a license abandoned if the applicant
122 fails to respond to any request for information required under this act, or any regulations adopted
123 pursuant to said sections. The commissioner shall notify the applicant, in writing, that if the
124 applicant fails to submit such information not later than sixty days after the date on which such
125 request for information was made, the application shall be deemed abandoned. An application
126 filing fee paid prior to the date an application is deemed abandoned and shall not be refunded.
127 Abandonment of an application pursuant to this subsection shall not preclude the applicant from
128 submitting a new application for a license under the provisions of this act.

129 Section 24N. (a) A student loan servicer shall not: (a) Directly or indirectly employ any
130 scheme, device or artifice to defraud or mislead student loan borrowers; (2) engage in any unfair
131 or deceptive practice toward any person or misrepresent or omit any material information in
132 connection with the servicing of a student education loan, including, but not limited to,
133 misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a
134 student education loan, the terms and conditions of the loan agreement or the borrower's
135 obligations under the loan; (3) obtain property by fraud or misrepresentation; (4) knowingly
136 misapply or recklessly apply student education loan payments to the outstanding balance of a
137 student education loan; (5) knowingly or recklessly provide inaccurate information to a credit
138 bureau, thereby harming a student loan borrower's creditworthiness; (6) fail to report both the
139 favorable and unfavorable payment history of the student loan borrower to a nationally
140 recognized consumer credit bureau at least annually if the student loan servicer regularly reports
141 information to a credit bureau; (7) refuse to communicate with an authorized representative of
142 the student loan borrower who provides a written authorization signed by the student loan
143 borrower, provided the student loan servicer may adopt procedures reasonably related to

144 verifying that the representative is in fact authorized to act on behalf of the student loan
145 borrower; or (8) negligently make any false statement or knowingly and willfully make any
146 omission of a material fact in connection with any information or reports filed with a
147 governmental agency or in connection with any investigation conducted by the Banking
148 Commissioner or another governmental agency.

149 (b) No person or entity licensed to act within Massachusetts as a student loan servicer
150 shall do so under any other name or at any other place of business other than that named in the
151 license. Any change of location of a place of business of a licensee shall require prior written
152 notice to the commissioner. Not more than one place of business shall be maintained under the
153 same license. A license shall not be transferable or assignable.

154 (c) A student loan servicer or a person or entity exempt from licensure pursuant to section
155 3 of this act shall maintain adequate records of each student education loan transaction for not
156 less than two years following the final payment on such student education loan or the assignment
157 of such student education loan, whichever occurs first, or such longer period as may be required
158 by any other provision of law. The commissioner may request a student loan servicer to make
159 such records available. A student loan servicer must comply with said request within than five
160 business. The commissioner may grant a licensee additional time to make such records available
161 upon request.

162 (d) A student loan servicer shall comply with all applicable federal laws and regulations
163 relating to student loan servicing. Any violation of federal law or regulation shall be deemed a
164 violation of this section and a basis upon which the commissioner may take enforcement action
165 pursuant to this act.

166 Section 24O. (a) The Commissioner shall have the authority to conduct investigations
167 and examinations for purpose of: (1) initial licensing, license renewal, license suspension, license
168 revocation or termination, or general or specific inquiry or investigation to determine compliance
169 with this act, the commissioner may access, receive and use any books, accounts, records, files,
170 documents, information or other evidence; (2) investigating violations or complaints arising
171 under this act.

172 (b) In making any examination or investigation authorized by this section, the
173 commissioner may access documents and records of the student loan servicer or person under
174 examination or investigation. Unless the commissioner has reasonable grounds to believe the
175 documents or records of the student loan servicer licensee or person have been, or are at risk of
176 being, altered or destroyed for purposes of concealing a violation of this act, the student loan
177 servicer or owner of the documents and records shall have access to the documents or records as
178 necessary to conduct ordinary business affairs.

179 (c) No student loan servicer or person subject to investigation or examination under this
180 section may knowingly withhold, abstract, remove, mutilate, destroy or any books, records,
181 computer records or other information.

182 (d) The commissioner may suspend, revoke or refuse to renew any license issued under
183 this act if the commissioner finds that: (1) the licensee has violated any provision of this act or
184 any regulation made pursuant to this act, or (2) any fact or condition exists which, if it had
185 existed at the time of the original application for the license, clearly would have warranted a
186 denial of such license. No abatement of the license fee shall be made if the license is
187 surrendered, revoked or suspended prior to the expiration of the period for which it was issued.

188 (e) If the commissioner determines that a person or entity has violated any of the
189 provisions of his act, or any regulation adopted pursuant to this act, or any person or entity
190 associated with said licensee has committed any fraud, engaged in dishonest activities or made
191 any misrepresentation, the commissioner may take action against such person or licensee in
192 accordance his powers promulgated in chapter 93 of the Massachusetts General Laws.

193 SECTION 5. Notwithstanding any general or special law to the contrary, the
194 commissioner shall file a report on the work of the Student Loan Ombudsman annually with the
195 clerks of the senate and house of representatives, the chairs of the house and senate committees
196 on ways and means and the house and senate chairs of the joint committee on financial services
197 beginning on January 1, 2018. The report shall include, but not be limited to: (1) the number of
198 complaints received by the Student Loan Ombudsman from student loan borrowers; (2) the types
199 of complaints received by the Student Loan Ombudsman from student loan borrowers; (3) any
200 recommendations to improve the effectiveness of the position of Student Loan Ombudsman; and
201 (4) any recommendations to improve regulation, oversight, and enforcement of the Division of
202 Banks over the licensing and enforcement of student loan servicers.

203 SECTION 6. Notwithstanding any general or special law to the contrary, the Student
204 Loan Ombudsman shall ensure state employees are informed of their right to public loan
205 forgiveness.

206 SECTION 7. The commissioner shall promulgate rules and regulations necessary to
207 implement the provisions of this act not later than three months after the effective date of this act.

208 SECTION 8. Sections 1, 2, 3 and 6, inclusive, shall take effect September 1, 2017.

209 SECTION 9. Section 4 shall take effect January 1, 2018.