SENATE . . . . . No. 2380

The Commonwealth of Massachusetts

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

SENATE, Thursday, March 29, 2018

The committee on Ways and Means to whom was referred the Senate Bill establishing a student loan bill of rights (Senate, No.129),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2380).

For the committee,
Karen E. Spilka

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In the One Hundred and Ninetieth General Court
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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:

SECTION 1. Chapter 12 of the General Laws is hereby amended by adding the following section:-

Section 34. There shall be within the office of the attorney general a student loan ombudsman. The student loan ombudsman shall receive, review and assist in resolving complaints from student loan borrowers including, but not limited to, those concerning attempts to resolve complaints in collaboration with institutions of higher education, student loan servicers, the division of banks and any other participants in student loan lending.

Responsibilities of the ombudsman may include, but shall not be limited to, helping borrowers: (i) explore repayment options; (ii) apply for federal income-driven repayment plans; (iii) avoid or remove a default; (iv) end wage garnishments, tax refund interceptions or benefit offsets; (v) resolve billing disputes with loan servicers; (vi) obtain loan details and information; (vii) stop harassing collection calls; and (viii) apply for discharges.

The ombudsman shall prepare, make available or direct those seeking assistance to student loan borrower education presentations and materials regarding student loans. The presentations and materials shall include, but not be limited to, an explanation of: (i) key loan terms; (ii) prescribed documentation requirements; (iii) monthly payment obligations; (iv) income-based repayment options; (v) loan forgiveness; and (vi) disclosure requirements. The ombudsman shall prepare or make available informational material about the public loan forgiveness program and shall make best efforts to inform public employees of the public loan forgiveness program and their right to public loan forgiveness.

The ombudsman may share information with the division of banks to assist the division in fulfilling its duties under section 3A of chapter 26.

SECTION 2. Chapter 26 of the General Laws is hereby amended by inserting after section 3 the following section:-

Section 3A. (a) The division of banks shall maintain a consumer assistance unit. The unit may provide assistance in complaints involving persons or entities it has authority to regulate or other areas as the commissioner deems appropriate which may include, but shall not be limited to, complaints and requests for assistance involving state-chartered banks and credit unions, check cashers, foreign transmittal companies, sales finance companies, mortgage lenders, brokers, originators and student loan servicers.

(b) Annually, not later than January 1, the commissioner shall file a report on activities related to student loans and student loan servicers, as defined in section 1 of chapter 93L, with the clerks of the senate and house of representatives, the chairs of the house and senate

committees on ways and means and the house and senate chairs of the joint committee on financial services.

The report shall include, but not be limited to: (i) the number of complaints received by the division from student loan borrowers and the names of the student loan servicers against whom complaints are filed; (ii) the types of complaints received by the division from student loan borrowers; (iii) the types of resolutions reached for complaints received; and (iv) recommendations to improve regulation, oversight and enforcement by the division over the licensing and enforcement of student loan servicers. The report shall also include an overview of any information received from the student loan ombudsman established in section 34 of chapter 12 concerning: (1) the number of complaints received by the student loan ombudsman: (2) the types of complaints received by the student loan ombudsman; (3) the types of resolutions reached by the student loan ombudsman; and (4) recommendations to improve the effectiveness of the position of student loan ombudsman . The report shall ensure that all information included in the report is aggregated and de-identified.

SECTION 3. The General Laws are hereby amended by inserting after chapter 93K the following chapter:-

CHAPTER 93L.

STUDENT LOAN SERVICERS.

Section 1. The following words shall have the following meanings unless the context clearly requires otherwise:

“Commissioner”, the commissioner of banks.

"Person", a natural person, corporation or other entity.

"Servicing", receiving a scheduled periodic payment from a borrower pursuant to the terms of a loan, including amounts for escrow accounts, and making the payments to the owner of the loan or other third party of principal and interest and other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the servicing loan document or servicing contract, including applying the payments of principal and interest and other payments with respect to the amounts received from a student loan borrower as may be required pursuant to the terms of a student loan and performing other administrative services with respect to a student loan.

"Student loan", a loan primarily used to finance education or other school-related expenses.

"Student loan borrower", a resident of the commonwealth who has received or agreed to pay a student loan or a person who shares responsibility with that resident for repaying the student loan.

"Student loan servicer", a person responsible for the servicing of a student loan to a student loan borrower.

Section 2. (a) No person shall directly or indirectly act as a student loan servicer without first obtaining a student loan servicer license from the commissioner unless that person is exempt from licensure pursuant to this section.

(b) The following persons shall be exempt from student loan servicer licensing requirements: (i) banks and credit unions, including federal credit unions and out-of-state banks

and credit unions; (ii) wholly-owned subsidiaries of banks and credit unions; and (iii) operating subsidiaries where each owner of the operating subsidiary is wholly owned by the same bank or credit union.

(c) A person seeking to act as a student loan servicer shall submit an application for a student loan servicer license in such form as the commissioner shall prescribe which may include a requirement that an applicant shall provide: (i) a financial statement prepared by a certified public accountant or a public accountant; (ii) a history of criminal convictions of the applicant; or (iii) any other information deemed necessary.

The application for a student loan servicer license shall be accompanied by a nonrefundable license fee and a nonrefundable investigation fee, the amount of each which shall be determined annually by the secretary of administration and finance under section 3B of chapter 7.

(d) Upon the filing of an application for an initial student loan servicer license and the payment of the license and investigation fees, the commissioner shall investigate the financial condition and responsibility, financial and business experience and character and general fitness of the applicant.

The commissioner may issue a student loan servicer license if the commissioner finds that: (i) the applicant's financial condition is sound; (ii) the applicant's business will be conducted honestly, fairly, equitably, carefully and efficiently and consistent with this chapter; (iii)(A) if the applicant is an individual, the individual is properly qualified and of good character; (B) if the applicant is a partnership, each partner is properly qualified and of good character; (C) if the applicant is a corporation or association, the president, chairperson of the

executive committee, senior officer responsible for the corporation's business and chief financial officer or any other person who performs similar functions as determined by the commissioner, each director, each trustee and each shareholder owning at least 10 per cent of each class of the securities of the corporation are properly qualified and of good character; and (D) if the applicant is a limited liability company, each member is in all respects properly qualified and of good character; (iv) no person on behalf of the applicant has knowingly made any incorrect statement of a material fact in the application or in any report or statement made pursuant to this chapter; (v) no person acting on behalf of the applicant has knowingly failed to state any material fact necessary to give the commissioner any information required by the commissioner; (vi) the applicant has paid the license and investigation fees under subsection (c); and (vii) the applicant has met all other requirements as determined by the commissioner.

(e) A student loan servicer license shall be valid for 1 year unless suspended or revoked and shall not be automatically renewed.

(f) A student loan servicer license may be renewed upon the filing of a renewal application containing all of the required documents and fees as provided in subsection (c). A renewal application shall be filed at least 30 days before the expiration of the student loan servicer's current license. The commissioner may assess a late fee for renewal applications filed less than 30 days before the expiration of a student loan servicer license.

If an application for renewal of a student loan servicer license has been filed with the commissioner on or before the date the previous license is to expire, the license sought to be renewed shall continue in full force and effect until the issuance by of the renewal license or until the commissioner has notified the licensee in writing of the commissioner's refusal to

renew the license, together with the grounds upon which that refusal is based. The commissioner may refuse to renew a student loan servicer license for any reason that the commissioner may refuse to issue an initial student loan servicer license.

(g) The commissioner may consider an application for a student loan servicer license abandoned if the applicant fails to respond to a request for information required under this section within 60 days after such request is made. The commissioner shall notify the applicant, in writing, that the application shall be considered abandoned if the applicant fails to submit that information within the required time period. Abandonment of an application pursuant to this subsection shall not preclude the applicant from submitting a new application for a student loan servicer license under this chapter.

Section 3. Not later than 15 days after a licensed student loan servicer ceases to engage in the business of student loan servicing for any reason including, but not limited to: (i) a business decision to terminate operations in the commonwealth; (ii) license revocation; (iii) bankruptcy; or (iv) voluntary dissolution, the licensee shall provide written notice of surrender to the commissioner and shall surrender to the commissioner the student loan servicer license for each location in which the licensee has ceased to engage in such business.

The notice shall include: (i) the location where the records of the student loan servicer shall be stored; and (ii) the name, address and telephone number of an individual authorized to provide access to the records. The surrender of a student loan servicer license shall not affect the licensee’s civil or criminal liability arising from acts or omissions occurring before the surrender of the license.

Section 4. The commissioner may participate in a multistate licensing system for the sharing of regulatory information and for the licensing and application, by electronic or other means, of persons engaged in student loan servicing. The commissioner may establish requirements for participation by an applicant in a multistate licensing system which may vary from the provisions of this section. The commissioner may require a background investigation of each applicant for a student loan servicer license by means of fingerprint and state and national criminal history record checks by the department of criminal justice information services pursuant to section 172 of chapter 6 and the Federal Bureau of Investigation.

If the applicant is a partnership, association, corporation or other form of business organization, the commissioner may require a background investigation for each member, director and principal officer of the applicant and any individual acting as a manager of an office location. The applicant shall pay directly to the multistate licensing system any additional fees related to participation in the multistate licensing system.

Section 5. (a) No person licensed as a student loan servicer shall be licensed under a name and place of business other than that named in the license. Before changing the location of its place of business, a licensed student loan servicer shall provide written notice to the commissioner. Not more than 1 place of business shall be maintained under the same student loan servicer license. A student loan servicer license shall be nontransferable and nonassignable.

(b) A student loan servicer shall maintain adequate records of each student loan transaction for at least 2 years following the final payment on the student loan or the assignment of the student loan, whichever occurs first, or a longer period if required by law. The commissioner may request these records from a student loan servicer and the servicer shall

comply with the request not later than 5 business days after it is received. The commissioner may, upon request, grant a student loan servicer additional time to make such records available.

(c) A student loan servicer shall comply with all applicable federal laws and regulations relating to student loan servicing. A violation of a federal law or regulation shall be a violation of this section and the commissioner may investigate pursuant to section 6.

Section 6. (a) The commissioner shall conduct investigations and examinations for the purpose of: (i) initial licensing, license renewal, license suspension, license revocation or termination or determining compliance with this chapter; and (ii) investigating violations or complaints arising under this chapter.

In an investigation and examination conducted pursuant to this section, the commissioner may access, receive and use from any relevant party books, accounts, records, files, documents, and other information as needed.

(b) In an investigation or examination investigation conducted pursuant to this section, the commissioner may access documents and records of the student loan servicer or any other person under examination or investigation. Unless the commissioner has reasonable grounds to believe the documents or records of the student loan servicer or person have been or are at risk of being altered or destroyed for the purposes of concealing a violation of this chapter, the student loan servicer or owner of the documents and records shall have access to the documents or records as necessary to conduct ordinary business affairs.

(c) No student loan servicer or person subject to investigation or examination under this section shall knowingly withhold, amend, remove, mutilate or destroy any books, records, computer records or other information requested by the commissioner.

(d) The commissioner may suspend a student loan servicer license if the commissioner finds that: (i) the student loan servicer has violated this chapter; or (ii) a fact or condition exists which would have warranted a denial of the license if the fact or condition existed at the time of the original application for the license.

(e) The commissioner may revoke or refuse to renew a student loan servicer license issued under this chapter if the commissioner finds: (i) 2 or more violations or conditions as described in subsection (d) during a license period; (ii) reckless or willful conduct on the part of the licensee; or (iii) it is in the public interest to revoke or refuse to renew the license.

(f) Notwithstanding any general or special law to the contrary, if the commissioner determines that a person has violated this chapter or that a person or entity associated with a student loan servicer has committed fraud or engaged in unfair, deceptive or dishonest activities, the commissioner may take action against that person or entity including, but not limited to: (i) suspension or revocation, pursuant to subsection (e), of that person's license; (ii) imposition of an administrative penalty of not more than $50,000 per incident, or (iii) both.

Section 7. A student loan servicer shall not engage in unfair methods of competition or unfair or deceptive acts or practices. A violation of this chapter shall also be a violation of chapter 93A. Nothing in this chapter shall preclude an action being brought under chapter 93A or any other law.

The commissioner may notify the attorney general or the student loan ombudsman established in section 34 of chapter 12 of a potential violation of this chapter or chapter 93A.

Section 8. The commissioner shall promulgate rules and regulations necessary to implement this chapter.

SECTION 4. The secretary of administration and finance shall establish the fees required under chapter 93L of the General Laws not later than December 31, 2019.

SECTION 5. The first report required under subsection (c) of section 3A of chapter 26 of the General Laws shall be submitted not later than January 1, 2021.

SECTION 6. Sections 1 and 2 shall take effect on September 1, 2019.

SECTION 7. Section 3 shall take effect on January 1, 2020.