

HOUSE No. 3977

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 18, 2019.

The committee on Financial Services to whom were referred the petition (accompanied by bill, House, No. 998) of Natalie M. Higgins and others relative to student loans and the oversight powers of the Division of Banks, and the petition (accompanied by bill, House, No. 1069) of David K. Muradian, Jr. and others relative to student loans and the oversight powers of the Division of Banks, reports recommending that the accompanying bill (House, No. 3977) ought to pass.

For the committee,

JAMES M. MURPHY.

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**In the One Hundred and Ninety-First General Court
(2019-2020)**

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

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

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

13 The ombudsman shall prepare, make available or direct those seeking assistance to
14 student loan borrower education presentations and materials regarding student loans. The
15 presentations and materials shall include, but not be limited to, an explanation of: (i) key loan
16 terms; (ii) prescribed documentation requirements; (iii) monthly payment obligations; (iv)
17 income-driven repayment options; (v) loan forgiveness; and (vi) disclosure requirements.

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

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

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

28 (b) Annually, not later than January 1, the commissioner shall file a report on activities
29 related to student loans and student loan servicers, as defined in section 1 of chapter 93L, with
30 the clerks of the senate and house of representatives, the chairs of the house and senate
31 committees on ways and means and the house and senate chairs of the joint committee on
32 financial services.

33 The report shall include, but not be limited to: (i) the number of complaints received by
34 the division from student loan borrowers and the names of the student loan servicers against

35 whom complaints are filed; (ii) the types of complaints received by the division from student
36 loan borrowers; (iii) the types of resolutions reached for complaints received; and (iv)
37 recommendations to improve regulation, oversight and enforcement by the division over the
38 licensing and enforcement of student loan servicers. The report shall also include an overview of
39 any information received from the student loan ombudsman established in section 34 of chapter
40 12 concerning: (1) the number of complaints received by the student loan ombudsman: (2) the
41 types of complaints received by the student loan ombudsman; (3) the types of resolutions
42 reached by the student loan ombudsman; and (4) recommendations to improve the effectiveness
43 of the position of student loan ombudsman . The report shall ensure that all information included
44 in the report is aggregated and de-identified.

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

47 CHAPTER 93L.

48 STUDENT LOAN SERVICERS.

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

51 “Commissioner”, the commissioner of banks.

52 “Person”, a natural person, corporation or other entity.

53 “Servicing”, receiving a scheduled periodic payment from a borrower pursuant to the
54 terms of a loan, and making the payments to the owner of the loan or other third party of
55 principal and interest and other payments with respect to the amounts received from the borrower

56 as may be required pursuant to the terms of the servicing loan document or servicing contract,
57 including applying the payments of principal and interest and other payments with respect to the
58 amounts received from a student loan borrower as may be required pursuant to the terms of a
59 student loan and performing other administrative services with respect to a student loan.

60 “Student loan”, a loan primarily used to finance education or other school-related
61 expenses.

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

65 “Student loan servicer”, servicers shall include: companies that collect payments on a
66 student loan, respond to customer service inquiries, and perform other administrative tasks
67 associated with maintaining a student loan, disburse money from the student loan track student
68 loans while borrowers are in school, process payments, respond to borrower inquiries and
69 information requests, accept applications and process changes in repayment plans, deferments,
70 forbearances, or other activities to prevent default, maintain student loan records, ensure the
71 administration of loans in compliance with federal regulations and other legal requirements.

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

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

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

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

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

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

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

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

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

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

116 If an application for renewal of a student loan servicer license has been filed with the
117 commissioner on or before the date the previous license is to expire, the license sought to be
118 renewed shall continue in full force and effect until the issuance by of the renewal license or
119 until the commissioner has notified the licensee in writing of the commissioner's refusal to
120 renew the license, together with the grounds upon which that refusal is based. The commissioner

121 may refuse to renew a student loan servicer license for any reason that the commissioner may
122 refuse to issue an initial student loan servicer license.

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

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

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

141 Section 4. The commissioner may participate in a multistate licensing system for the
142 sharing of regulatory information and for the licensing and application, by electronic or other

143 means, of persons engaged in student loan servicing. The commissioner may establish
144 requirements for participation by an applicant in a multistate licensing system which may vary
145 from the provisions of this section. The commissioner may require a background investigation of
146 each applicant for a student loan servicer license by means of fingerprint and state and national
147 criminal history record checks by the department of criminal justice information services
148 pursuant to section 172 of chapter 6 and the Federal Bureau of Investigation.

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

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

159 (b) A student loan servicer shall maintain adequate records of each student loan
160 transaction for at least 2 years following the final payment on the student loan or the assignment
161 of the student loan, whichever occurs first, or a longer period if required by law. These records
162 shall include all notices required by federal laws or regulations. The commissioner or student
163 loan ombudsman established in section 34 of chapter 12 may request these records from a
164 student loan servicer and the servicer shall comply with the request not later than 5 business days

165 after it is received. The commissioner or the student loan ombudsman may, upon request, grant a
166 student loan servicer additional time to make such records available.

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

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

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

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

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

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

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

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

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

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

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

209 SECTION 4. Chapter 29 of the General Laws is hereby amended by inserting after
210 section 2YYYY the following section:-

211 Section 2ZZZZ. There shall be established and set up on the books of the commonwealth
212 a trust fund to be known as the Student Loan Assistance Trust Fund to be administered and
213 expended by the office of the attorney general.

214 Expenditures may be made from the fund for the purposes of: (i) funding the work of the
215 student loan ombudsman established under section 34 of chapter 12; (ii) providing direct
216 counseling and assistance to student loan borrowers; (iii) receiving, reviewing and assisting in
217 resolving complaints from student loan borrowers; and (iv) pursuing legal action on behalf of
218 student loan borrowers including, but not limited to, the investigation of such claims, the costs of
219 personnel and litigation, the engagement of experts and the enforcement of settlements. Amounts
220 credited to the fund shall not be subject to further appropriation and money remaining in the fund
221 at the end of a fiscal year shall not revert to the General Fund. The fund shall retain all interest
222 earned on sums deposited in the fund.

223 The fund may receive revenue from appropriations, other money authorized by the
224 general court designated to the fund and funds from public or private sources, including, but not
225 limited to, gifts, grants, donations, rebates and settlements received by the commonwealth
226 specifically designated for the purposes of this section.

227 The office of the attorney general shall provide an annual report to the house and senate
228 committees on ways and means on the fund's activity. The report shall include, but shall not be
229 limited to, the following information for the preceding quarter: (i) the total amount of money in
230 the fund, designated by source; (ii) the amount of money received by the fund, designated by

231 source; (iii) if settlement funds were received, the percentage of the total settlement amount
232 deposited into the fund; (iv) an accounting of all expenditures from the fund; (v) a description of
233 the activities and staff supported by the fund; and (vi) revenue and expenditure projections for
234 the current fiscal year and for the next fiscal year.

235 SECTION 5. The secretary of administration and finance shall establish the fees required
236 under chapter 93L of the General Laws not later than December 31, 2020.

237 SECTION 6. The first report required under subsection (c) of section 3A of chapter 26 of
238 the General Laws shall be submitted not later than January 1, 2022.

239 SECTION 7. Sections 1 and 2 shall take effect on September 1, 2020.

240 SECTION 8. Section 3 shall take effect on January 1, 2021.