

HOUSE No. 1069

The Commonwealth of Massachusetts

PRESENTED BY:

David K. Muradian, Jr.

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:	DATE ADDED:
<i>David K. Muradian, Jr.</i>	<i>9th Worcester</i>	<i>1/18/2019</i>
<i>Donald R. Berthiaume, Jr.</i>	<i>5th Worcester</i>	<i>1/31/2019</i>
<i>William L. Crocker, Jr.</i>	<i>2nd Barnstable</i>	<i>1/28/2019</i>
<i>William J. Driscoll, Jr.</i>	<i>7th Norfolk</i>	<i>2/1/2019</i>
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>	<i>2/1/2019</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>	<i>1/29/2019</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>1/29/2019</i>
<i>Shaunna L. O'Connell</i>	<i>3rd Bristol</i>	<i>1/31/2019</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>	<i>1/22/2019</i>

HOUSE No. 1069

By Mr. Muradian of Grafton, a 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. Financial Services.

The Commonwealth of Massachusetts

**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. Section 24 of chapter 93 of the General Laws, as so appearing in the 2016
2 Official Edition, is hereby amended by striking the definition of “servicing” and inserting thereof
3 the following definition:-

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

13 student education loan and performing other administrative services with respect to a student
14 education loan.

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

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

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

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

24 SECTION 3. Section 24A of Chapter 93 of the General Laws, as so appearing, is hereby
25 amended by adding at the end of subsection (b) the following sentence:- “A student loan
26 servicer who also acts as a third party loan servicer shall also be required to comply with sections
27 24M to 24O, inclusive.

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

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

33 (b) The Student Loan Ombudsman shall work in consultation with the commissioner. The
34 responsibilities of the Student Loan Ombudsman will include, but not be limited to: (1) receive,
35 review and assist in resolving complaints from student loan borrowers, including, but not limited
36 to, attempts to resolve such complaints in collaboration with institutions of higher education,
37 student loan servicers, and any other participants in student loan lending, including, but not
38 limited to, the University of Massachusetts, the Board of Higher Education, the Office of Higher
39 Education, The Massachusetts Educational Financing Agency, or the Massachusetts Student
40 Loan Authority; (2) compile and analyze data on student loan borrower complaints and any
41 subsequent resolutions; (3) assist student loan borrowers to understand their rights and
42 responsibilities under the terms of student education loans; (4) provide information to the public
43 regarding the problems and concerns of student loan borrowers; (5) make recommendations to
44 the commissioner for resolving those problems and concerns; (6) analyze and monitor the
45 development and implementation of federal, state and local laws, regulations and policies
46 relating to student loan borrowers and recommend any related changes deemed necessary; (7)
47 review complete student education loan history for any student loan borrower who has provided
48 written consent for such review; and (8) disseminate information to student loan borrowers,
49 potential student loan borrowers, public institutions of higher education, student loan servicers
50 and any other participant in student education loan lending.

51 (c) The Student Loan Ombudsman, in consultation with the commissioner, shall establish
52 and a student loan borrower education course to include educational presentations and materials
53 regarding student education loans. Said program shall include, but not be limited to, an
54 explanation of key loan terms, prescribed documentation requirements, monthly payment
55 obligations, income-based repayment options, loan forgiveness and disclosure requirements. Any

56 license, renewal, late filing, or investigation fees, as well as any penalties assessed under this
57 section, shall be used to fund the student loan borrower education course.

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

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

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

73 (d) Upon the filing of an application for an initial license and the payment of the fees for
74 license and investigation, the commissioner shall investigate the financial condition and
75 responsibility, financial and business experience, character and general fitness of the applicant.
76 The commissioner may issue a license if the commissioner finds that: (1) the applicant's financial
77 condition is sound; (2) the applicant's business will be conducted honestly, fairly, equitably,

78 carefully and efficiently within the purposes and intent of this act; (3) (A) if the applicant is an
79 individual, such individual is in all respects properly qualified and of good character, (B) if the
80 applicant is a partnership, each partner is in all respects properly qualified and of good character,
81 (C) if the applicant is a corporation or association, the president, chairperson of the executive
82 committee, senior officer responsible for the corporation's business and chief financial officer or
83 any other person who performs similar functions as determined by the commissioner, each
84 director, each trustee and each shareholder owning ten per cent or more of each class of the
85 securities of such corporation is in all respects properly qualified and of good character, or (D) if
86 the applicant is a limited liability company, each member is in all respects properly qualified and
87 of good character; (4) no person on behalf of the applicant has knowingly made any incorrect
88 statement of a material fact in the application, or in any report or statement made pursuant to this
89 act; (5) no person on behalf of the applicant knowingly has omitted to state any material fact
90 necessary to give the commissioner any information lawfully required by the commissioner; (6)
91 the applicant has paid the investigation fee and the license fee required under subsection (b) of
92 this section; and (7) the applicant has met any other requirements as determined by the
93 commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

194 SECTION 5. Notwithstanding any general or special law to the contrary, the
195 commissioner shall file a report on the work of the Student Loan Ombudsman annually with the
196 clerks of the senate and house of representatives, the chairs of the house and senate committees
197 on ways and means and the house and senate chairs of the joint committee on financial services
198 beginning on January 1, 2020. The report shall include, but not be limited to: (1) the number of
199 complaints received by the Student Loan Ombudsman from student loan borrowers; (2) the types
200 of complaints received by the Student Loan Ombudsman from student loan borrowers; (3) any
201 recommendations to improve the effectiveness of the position of Student Loan Ombudsman; and
202 (4) any recommendations to improve regulation, oversight, and enforcement of the Division of
203 Banks over the licensing and enforcement of student loan servicers.

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

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

209 SECTION 8. Sections 1, 2, 3 and 6, inclusive, shall take effect September 1, 2019.

210 SECTION 9. Section 4 shall take effect January 1, 2020.