

SENATE No. 2595

The Commonwealth of Massachusetts

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

SENATE, March 12, 2020.

The committee on Ways and Means to whom was referred the Senate Bill establishing a student loan bill of rights (Senate, No. 160), - reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2595).

For the committee,
Michael J. Rodrigues

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

8 (b) The responsibilities of the ombudsman may include, but shall not be limited to,
9 helping student loan borrowers: (i) explore repayment options; (ii) apply for federal 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 with student loan servicers; (vi)
12 obtain student loan details and information; (vii) stop harassing collection calls; and (viii) apply
13 for discharges.

14 The ombudsman shall prepare, make available or direct those seeking assistance to
15 student loan borrower education presentations and materials regarding student loans. The
16 presentations and materials shall include, but not be limited to, an explanation of: (i) key student
17 loan terms; (ii) documentation requirements; (iii) monthly payment obligations; (iv) income-
18 based repayment options; (v) student loan forgiveness; and (vi) disclosure requirements. The
19 ombudsman shall make best efforts to inform public employees about the federal Public Service
20 Loan Forgiveness Program and direct them to available information about the program.

21 (c) Annually, not later than January 1, the ombudsman shall file a report on activities
22 related to student loans and student loan servicers, as defined in section 1 of chapter 93L, with
23 the clerks of the senate and house of representatives, the senate and house committees on ways
24 and means and the joint committee on financial services.

25 The report shall include, but not be limited to: (i) the number of complaints received by
26 the ombudsman from student loan borrowers and the names of the student loan servicers against
27 whom such complaints are filed; (ii) the types of complaints received by the ombudsman from
28 student loan borrowers; (iii) the types of resolutions reached for complaints received; and (iv)
29 recommendations to improve the effectiveness of the position of student loan ombudsman.

30 The report shall also include an overview of any information received from the division
31 of banks including, but not limited to: (i) the number of complaints received by the division of
32 banks concerning student loans; (ii) the types of complaints received by the division of banks
33 concerning student loans; (iii) the types of resolutions reached by the division of banks; and (iv)
34 recommendations to improve the regulation, oversight and enforcement efforts of the division of

35 banks with respect to student loan servicers. Information and data in the report shall be in an
36 aggregate and de-identified format.

37 (d) The ombudsman shall receive information from the division of banks to assist the
38 ombudsman in fulfilling its duties under this section.

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

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

47 (b) The unit shall share information with the student loan ombudsman to assist the
48 student loan ombudsman in fulfilling the student loan ombudsman's duties under section 35 of
49 chapter 12.

50 SECTION 3. Chapter 29 of the General Laws is hereby amended by inserting after
51 section 2HHHHH the following section:-

52 Section 2IIII. There shall be a Student Loan Assistance Trust Fund administered by the
53 office of the attorney general.

54 Expenditures may be made from the fund to: (i) fund the work of the student loan
55 ombudsman established under section 35 of chapter 12; (ii) provide direct counseling and

56 assistance to student loan borrowers; (iii) receive, review and assist in the resolution of
57 complaints from student loan borrowers; and (iv) pursue legal action on behalf of student loan
58 borrowers including, but not limited to, the investigation of complaints , the costs of personnel
59 and litigation, the engagement of experts and the enforcement of settlements.

60 Amounts credited to the fund shall not be subject to further appropriation and money
61 remaining in the fund at the end of a fiscal year shall not revert to the General Fund. The fund
62 shall retain all interest earned on sums deposited in the fund.

63 The fund may receive revenue from: (i) appropriations or other money authorized by the
64 general court designated to the fund; and (ii) funds from public or private sources specifically
65 designated for the purposes of this section, including, but not limited to, gifts, grants, donations,
66 rebates and settlements received by the commonwealth.

67 The office of the attorney general shall provide an annual report to the house and senate
68 committees on ways and means on the fund's activity. The report shall include, but not be
69 limited to: (i) the total amount of money in the fund, designated by source; (ii) the amount of
70 money received by the fund, designated by source; (iii) if settlement funds were received, the
71 percentage of the total settlement amount deposited into the fund; (iv) an accounting of all
72 expenditures from the fund; (v) a description of the activities and staff supported by the fund;
73 and (vi) revenue and expenditure projections for the current fiscal year and for the next fiscal
74 year.

75 SECTION 4. Section 24A of chapter 93 of the General Laws, as appearing in the 2018
76 Official Edition, is hereby amended by adding the following subsection:-

77 (e) A student loan servicer licensed under chapter 93L who is engaged solely in the
78 activities of a student loan servicer shall not be required to: (i) obtain a debt collector license
79 pursuant to subsection (a); or (ii) register as a third party loan servicer pursuant to subsection (b);
80 provided, however, that if a student loan servicer acts, represents, operates or holds itself out as a
81 third party loan servicer or debt collector outside of the scope of said chapter 93L, the student
82 loan servicer shall register as a third party loan servicer or obtain a debt collector license, or
83 both, as appropriate. A licensed student loan servicer who engages in third party loan servicing
84 activities or debt collection activities within the scope of said chapter 93L shall comply with all
85 state and federal laws and regulations governing third party loan servicers and debt collection
86 when acting in such capacity.

87 SECTION 5. The General Laws are hereby amended by inserting after chapter 93K the
88 following chapter:-

89 CHAPTER 93L.

90 STUDENT LOAN SERVICERS.

91 Section 1. As used in this chapter, the following terms shall have the following meanings
92 unless the context clearly requires otherwise:-

93 “Commissioner”, the commissioner of banks.

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

95 “Servicing”, (i) receiving or soliciting a scheduled periodic payment from a borrower
96 pursuant to the terms of a student loan and making the principal, interest and other payments to
97 the owner of the loan or other third party with respect to the amounts received from the borrower

98 as may be required pursuant to the terms of the servicing loan document or servicing contract;
99 (ii) maintaining account records for a loan and communicating with the borrower regarding the
100 loan on behalf of the owner of the loan during a period in which no payment is required on the
101 loan; or (iii) interacting with a borrower, including activities to help prevent default on
102 obligations arising from a loan, to facilitate the activities described in clause (i) or clause (ii).

103 “Student loan”, a loan primarily used to finance post-secondary education or other
104 school-related expenses.

105 “Student loan borrower”, a resident of the commonwealth who has received or agreed to
106 repay a student loan or a person who shares responsibility with that resident for repaying the
107 student loan.

108 “Student loan servicer”, a person responsible for servicing a student loan to a student loan
109 borrower.

110 Section 2. (a) A person shall not directly or indirectly act as a student loan servicer
111 without first obtaining a student loan servicer license pursuant to subsection (e) or an automatic
112 federal student loan servicer license pursuant to subsection (f), as applicable, unless the person is
113 exempt from licensure pursuant to subsection (b); provided, however, that a person with an
114 automatic federal student loan servicer license shall not directly or indirectly act as a student loan
115 servicer, other than pursuant to a contract with the United States Secretary of Education under 20
116 U.S.C. 1087f, without first obtaining a student loan servicer license under subsection (e).

117 (b) The following persons shall be exempt from student loan servicer licensing
118 requirements under this section: (i) banks and credit unions, including federal credit unions and

119 out-of-state banks and credit unions; (ii) wholly-owned subsidiaries of banks and credit unions;
120 and (iii) nonprofit or public institutions of higher education.

121 (c) A person seeking to act as a student loan servicer, other than pursuant to a contract
122 with the United States Secretary of Education under 20 U.S.C. 1087f, shall submit an application
123 for a student loan servicer license in such form as the commissioner shall prescribe. The
124 application may require that an applicant provide: (i) a financial statement prepared by a certified
125 public accountant or a public accountant; (ii) a history of criminal convictions of the applicant;
126 or (iii) any other information the commissioner considers necessary.

127 (d) An application for a student loan servicer license shall be accompanied by: (i) a
128 nonrefundable license fee; (ii) a nonrefundable investigation fee; and (iii) a surety bond that
129 provides for coverage for the applicant in an amount determined by the commissioner and in a
130 form prescribed by the commissioner. The secretary of administration and finance shall annually
131 determine the amounts of the license and investigation fees required under clauses (i) and (ii)
132 pursuant to section 3B of chapter 7. The amount and form of the surety bond required under
133 clause (iii) shall be determined by the commissioner.

134 (e) After the filing of an application for an initial student loan servicer license and the
135 payment of the license and investigation fees, the commissioner shall investigate the financial
136 condition, responsibility, financial and business experience, character and general fitness of the
137 applicant.

138 The commissioner may issue a student loan servicer license if the commissioner finds
139 that: (i) the applicant's financial condition is sound; (ii) the applicant's business has been
140 conducted and will be conducted honestly, fairly, equitably, carefully, efficiently and in a

141 manner consistent with this chapter; (iii) (A) if the applicant is an individual, the individual is
142 properly qualified and of good character; (B) if the applicant is a partnership, each partner is
143 properly qualified and of good character; (C) if the applicant is a corporation or association, the
144 president, chair of the executive committee, senior officer responsible for the corporation's
145 business and chief financial officer or any other person who performs similar functions as
146 determined by the commissioner, each director, each trustee and each shareholder owning at
147 least 10 per cent of each class of the securities of the corporation are properly qualified and of
148 good character; or (D) if the applicant is a limited liability company, each member is properly
149 qualified and of good character; (iv) no person on behalf of the applicant has knowingly made
150 any incorrect statement of a material fact in the application or in any report or statement made
151 pursuant to this chapter; (v) no person acting on behalf of the applicant has knowingly failed to
152 state any material fact necessary to give the commissioner any information required by the
153 commissioner; (vi) the applicant has paid the license and investigation fees and provided the
154 required surety bond under subsection (d); and (vii) the applicant has met all other requirements
155 as determined by the commissioner.

156 (f) The commissioner shall issue an automatic federal student loan servicer license to a
157 person that acts or intends to act as a student loan servicer pursuant to a contract with the United
158 States Secretary of Education under 20 U.S.C. 1087f. The automatic federal student loan servicer
159 license shall be irrevocable and shall not expire except as otherwise provided in this section..

160 Upon receipt of the automatic federal student loan servicer license, the student loan
161 servicer shall pay the license and investigation fees and provide the required bond under
162 subsection (d).

163 A person issued an automatic federal student loan servicer license shall provide written
164 notice to the commissioner not more than 7 business days after receiving notification of the
165 expiration, revocation or termination of a contract awarded by the United States Secretary of
166 Education under 20 U.S.C 1087f. An automatic federal student loan servicer license shall
167 immediately expire if the licensee is no longer acting as a student loan servicer pursuant to a
168 contract with the United States Secretary of Education under 20 U.S.C. 1087f. Nothing in this
169 subsection shall prevent the commissioner from issuing a cease and desist or injunction against a
170 student loan servicer to cease activities in violation of this chapter to the extent permitted by law.

171 (g) A student loan servicer license issued pursuant to subsection (e) shall be valid for 1
172 year as of a date determined by the commissioner unless suspended or revoked and shall not be
173 automatically renewed.

174 (h) A student loan servicer license issued pursuant to subsection (e) may be renewed
175 upon the filing of a renewal application containing all of the required documents and fees as
176 provided in subsection (c). A renewal application shall be filed not less than 30 days before the
177 expiration of the student loan servicer's current license. The commissioner may assess a late fee
178 for renewal applications filed less than 30 days before the expiration of a student loan servicer
179 license.

180 If an application for renewal of a student loan servicer license under said subsection (e)
181 has been filed with the commissioner not later than the date the previous license is to expire, the
182 license sought to be renewed shall continue in full force and effect until the issuance of the
183 renewal license or until the commissioner has notified the licensee in writing of the
184 commissioner's refusal to renew the license, together with the grounds upon which that refusal is

185 based. The commissioner may refuse to renew a student loan servicer license for any reason that
186 the commissioner may refuse to issue an initial student loan servicer license under said
187 subsection (e).

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

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

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

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

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

220 Section 5. (a) If a person licensed as a student loan servicer under subsection (e) of
221 section 2 intends to operate at any place in addition to the address on the license or plans to
222 change the location of its place of business, the licensee shall: (i) notify the commissioner, in
223 writing, not less than 30 days before doing so; and (ii) shall pay a fee for each additional location
224 at a reasonable cost as determined by the commission. Such notice shall contain the address of
225 any additional or changed location and such other information required by the commissioner. A
226 student loan servicer license shall not be transferable or assignable.

227 (b) A student loan servicer shall maintain adequate records of each student loan
228 transaction for not less than 2 years following the final payment on the student loan or the

229 assignment of the student loan, whichever occurs first, or except as otherwise required by federal
230 law or a contract with the United States Secretary of Education under 20 U.S.C. 1087f. The
231 commissioner may request these records from a student loan servicer and the servicer shall
232 comply with the request not later than 5 business days after the request is received. The
233 commissioner may, upon request, grant a student loan servicer additional time to make such
234 records available.

235 Section 6. A student loan servicer shall comply with all applicable federal laws and
236 regulations relating to student loan servicing. A violation of a federal law or regulation shall be a
237 violation of this chapter and the commissioner may investigate any such violation pursuant to
238 section 7.

239 Section 7. (a) The commissioner shall conduct investigations and examinations for: (i)
240 initial licensing, license renewal, license suspension, license revocation or termination or
241 determining compliance with this chapter; and (ii) investigation of violations or complaints
242 arising under this chapter.

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

246 If there is reason to believe that a person other than a licensee has violated this chapter,
247 the commissioner may investigate the person as necessary. The commissioner may examine the
248 person who allegedly violated this chapter and may compel the production of relevant books,
249 accounts, records, files, documents and other information as needed.

250 The total cost for any investigation or examination shall be paid by the student loan
251 servicer not more than 30 days after the receipt of an invoice for the total cost, shall be in
252 accordance with fees determined annually by the secretary of administration and finance
253 pursuant to section 3B of chapter 7 and shall include expenses for necessary travel outside of the
254 commonwealth to conduct the investigation or examination.

255 All records of investigations and reports of examinations by the commissioner, including
256 workpapers, information derived from the reports and responses to the reports, and any copies
257 thereof in the possession of a student loan servicer under the supervision of the commissioner,
258 shall be confidential and privileged communications; provided, however, that nothing in this
259 subsection shall interfere with the work of the office of the student loan ombudsman established
260 under section 35 of chapter 12; and provided further, that records shall be made public if it is in
261 the public interest.

262 For the purposes of this subsection, records of investigation and reports of examinations
263 shall include records of investigation and reports of examinations conducted by a financial
264 regulatory agency of the federal government, another state or a foreign government that are
265 considered confidential by the agency or foreign government and are in the possession of the
266 commissioner. In a proceeding before a court, the court may issue a protective order in
267 appropriate circumstances to protect the confidentiality of the record and order that the record on
268 file with the court or filed in connection with the court proceeding be sealed and that the public
269 be excluded from any portion of the proceeding at which the record is disclosed. Copies of the
270 reports of examination shall be furnished to a licensee for the licensee's use only and shall not be
271 exhibited to any other person, organization or agency without prior written approval by the
272 commissioner. The commissioner may furnish information, reports and statements relating to the

273 licensees under the commissioner's supervision to regulatory agencies of the federal government,
274 other states and foreign countries and to law enforcement agencies as considered appropriate.

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

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

285 (d) The commissioner may suspend a student loan servicer license issued under
286 subsection (e) of section 2 if the commissioner finds that: (i) the student loan servicer has
287 violated this chapter; or (ii) a fact or condition exists that would have warranted a denial of the
288 license if the fact or condition existed at the time of the original application for the license.

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

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

300 Section 8. A student loan servicer shall not engage in unfair methods of competition or
301 unfair or deceptive acts or practices. A violation of this chapter shall also be a violation of
302 chapter 93A. Nothing in this chapter shall preclude an action being brought under said chapter
303 93A or any other law.

304 The commissioner may notify the attorney general or the student loan ombudsman
305 established in section 35 of chapter 12 of a potential violation of this chapter or said chapter 93A.

306 Section 9. The commissioner shall promulgate rules and regulations necessary to
307 implement this chapter.

308 SECTION 6. The secretary of administration and finance shall establish the fees required
309 under chapter 93L of the General Laws not later than December 31, 2020.

310 SECTION 7. The first report required under section 35 of chapter 12 of the General Laws
311 shall be submitted not later than January 1, 2022.

312 SECTION 8. Sections 1 and 2 shall take effect on September 1, 2020.

313 SECTION 9. Section 5 shall take effect on January 1, 2021.