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

FILED ON: 3/12/2020

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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:

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

Section 35. (a) There shall be a student loan ombudsman within the office of the attorney general. 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.

(b) The responsibilities of the ombudsman may include, but shall not be limited to, helping student loan 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 student loan servicers; (vi) obtain student 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 student loan terms; (ii) documentation requirements; (iii) monthly payment obligations; (iv) income-based repayment options; (v) student loan forgiveness; and (vi) disclosure requirements. The ombudsman shall make best efforts to inform public employees about the federal Public Service Loan Forgiveness Program and direct them to available information about the program.

(c) Annually, not later than January 1, the ombudsman 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 senate and house committees on ways and means and the joint committee on financial services.

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

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

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

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

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 response to complaints involving any person or entity that the division has authority to regulate or in 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) The unit shall share information with the student loan ombudsman to assist the student loan ombudsman in fulfilling the student loan ombudsman's duties under section 35 of chapter 12.

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

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

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

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

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

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

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

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

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

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

CHAPTER 93L.

STUDENT LOAN SERVICERS.

Section 1. As used in this chapter, the following terms 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”, (i) receiving or soliciting a scheduled periodic payment from a borrower pursuant to the terms of a student loan and making the principal, interest and other payments to the owner of the loan or other third party 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; (ii) maintaining account records for a loan and communicating with the borrower regarding the loan on behalf of the owner of the loan during a period in which no payment is required on the loan; or (iii) interacting with a borrower, including activities to help prevent default on obligations arising from a loan, to facilitate the activities described in clause (i) or clause (ii).

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

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

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

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

(b) The following persons shall be exempt from student loan servicer licensing requirements under this section: (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) nonprofit or public institutions of higher education.

(c) A person seeking to act as a student loan servicer, other than pursuant to a contract with the United States Secretary of Education under 20 U.S.C. 1087f, shall submit an application for a student loan servicer license in such form as the commissioner shall prescribe. The application may require that an applicant 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 the commissioner considers necessary.

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

(e) After 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, responsibility, financial and business experience, 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 has been conducted and will be conducted honestly, fairly, equitably, carefully, efficiently and in a

manner 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, chair 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; or (D) if the applicant is a limited liability company, each member is 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 and provided the required surety bond under subsection (d); and (vii) the applicant has met all other requirements as determined by the commissioner.

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

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

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

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

(h) A student loan servicer license issued pursuant to subsection (e) 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 not less than 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 under said subsection (e) has been filed with the commissioner not later than the date the previous license is to expire, the license sought to be renewed shall continue in full force and effect until the issuance 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 under said subsection (e).

(i) The commissioner may consider an application for a student loan servicer license under subsection (e) 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 expiration, revocation or termination; (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 or automatic federal student loan servicer license for each location in which the licensee has ceased to engage in such business.

The notice shall include, but not be limited to: (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 or automatic federal 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 application, by electronic or other means, and licensing of persons engaged in student loan servicing. The commissioner may establish requirements for participation by an applicant in a multistate licensing system that vary from the provisions of this chapter. 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) If a person licensed as a student loan servicer under subsection (e) of section 2 intends to operate at any place in addition to the address on the license or plans to change the location of its place of business, the licensee shall: (i) notify the commissioner, in writing, not less than 30 days before doing so; and (ii) shall pay a fee for each additional location at a reasonable cost as determined by the commission. Such notice shall contain the address of any additional or changed location and such other information required by the commissioner. A student loan servicer license shall not be transferable or assignable.

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

assignment of the student loan, whichever occurs first, or except as otherwise required by federal law or a contract with the United States Secretary of Education under 20 U.S.C. 1087f. 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 the request is received. The commissioner may, upon request, grant a student loan servicer additional time to make such records available.

Section 6. 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 chapter and the commissioner may investigate any such violation pursuant to section 7.

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

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

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

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

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

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

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

(b) In an investigation or examination conducted pursuant to this section, the commissioner shall have free access to the documents and records of the student loan servicer or any other person under investigation or examination. Unless the commissioner has reasonable grounds to believe that the documents or records of the student loan servicer or other 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 issued under subsection (e) of section 2 if the commissioner finds that: (i) the student loan servicer has violated this chapter; or (ii) a fact or condition exists that 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 subsection (e) of section 2 if the commissioner finds: (i) 2 or more violations or facts 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 of that person's license pursuant to subsection (e); (ii) imposition of an administrative penalty of not more than $50,000 per incident; or (iii) both.

Section 8. 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 said chapter 93A or any other law.

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

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

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

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

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

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