

SENATE No. 2421

Senate, April 11, 2018, – Text of the Senate Bill establishing a student loan bill of rights (being the text of Senate document number 2380, printed as amended)

The Commonwealth of Massachusetts

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

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, the division of banks 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 income-driven repayment plans;
10 (iii) avoid or remove a default; (iv) end wage garnishments, tax refund interceptions or benefit
11 offsets; (v) resolve billing disputes with loan servicers; (vi) obtain loan details and information;
12 (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-based repayment options; (v) loan forgiveness; and (vi) disclosure requirements. The
18 ombudsman shall prepare or make available informational material about the public loan
19 forgiveness program and shall make best efforts to inform public employees of the public loan
20 forgiveness program and their right to public loan forgiveness.

21 Annually, not later than January 1, the ombudsman shall file a report on activities related
22 to student loans and student loan servicers, as defined in section 1 of chapter 93L, with the clerks
23 of the senate and house of representatives, the chairs of the house and senate committees on
24 ways and means and the house and senate chairs of 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 complaints are filed; (ii) the types of complaints received by the ombudsman from student
28 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. The
30 report shall also include an overview of any information received from the division of banks
31 concerning: (i) the number of complaints received by the division of banks concerning student
32 loans; (ii) the types of complaints received by the division of banks concerning student loans;
33 (iii) the types of resolutions reached by the division of banks; and (iv) recommendations to
34 improve the regulation, oversight and enforcement efforts of the division of banks with respect to

35 student loan servicers. The report shall ensure that all information included in the report is
36 aggregated and de-identified.

37 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 29 of the General Laws is hereby amended by inserting after
40 section 2YYYY the following section:-

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

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

53 The fund may receive revenue from appropriations, other money authorized by the
54 general court designated to the fund and funds from public or private sources, including, but not

55 limited to, gifts, grants, donations, rebates and settlements received by the commonwealth
56 specifically designated for the purposes of this section.

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

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

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

73 (b) The unit shall share information with the student loan ombudsman to assist the
74 ombudsman in fulfilling the ombudsman's duties under section 34 of chapter 12.

75 SECTION 4. Section 24A of chapter 93 of the General Laws is hereby amended by
76 inserting after subsection (d) 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) register as a third party loan
79 servicer pursuant to subsection (b) or (ii) obtain a debt collector license pursuant to subsection
80 (a); provided, however, that if a student loan servicer acts, represents, operates or holds
81 themselves out as a third party loan servicer or debt collector outside of the scope of chapter 93L,
82 then the student loan servicer shall either register as a third party loan servicer or obtain a debt
83 collector license, or both, as appropriate. A licensed student loan servicer who engages in third
84 party loan servicing activities or debt collection activities within the scope of chapter 93L shall
85 comply with all state and federal laws and regulations governing third party loan servicers and
86 debt collection when acting in such capacity.

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

CHAPTER 93L.

STUDENT LOAN SERVICERS.

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

91 “Commissioner”, the commissioner of banks.

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

93 “Servicing”, receiving or soliciting a scheduled periodic payment from a borrower
94 pursuant to the terms of a loan, including amounts for escrow accounts, and making the
95 payments to the owner of the loan or other third party of principal and interest and other

96 payments with respect to the amounts received from the borrower as may be required pursuant to
97 the terms of the servicing loan document or servicing contract, including applying the payments
98 of principal and interest and other payments with respect to the amounts received from a student
99 loan borrower as may be required pursuant to the terms of a student loan and performing other
100 administrative services with respect to a student loan.

101 “Student loan”, a loan primarily used to finance postsecondary education or other school-
102 related expenses.

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

106 “Student loan servicer”, a person responsible for the servicing of a student loan to a
107 student loan borrower.

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

111 (b) The following persons shall be exempt from student loan servicer licensing
112 requirements: (i) banks and credit unions, including federal credit unions and out-of-state banks
113 and credit unions; (ii) wholly-owned subsidiaries of banks and credit unions; and (iii) nonprofit
114 institutions of higher education.

115 (c) A person seeking to act as a student loan servicer shall submit an application for a
116 student loan servicer license in such form as the commissioner shall prescribe, which may

117 include a requirement that an applicant shall provide: (i) a financial statement prepared by a
118 certified public accountant or a public accountant; (ii) a history of criminal convictions of the
119 applicant; (iii) a surety bond providing for coverage for the applicant in an amount determined
120 by the commissioner and in a form prescribed by the commissioner; or (iv) any other information
121 the commissioner considers necessary.

122 An application for a student loan servicer license shall be accompanied by a
123 nonrefundable license fee and a nonrefundable investigation fee. The amount of such fees shall
124 be determined annually by the secretary of administration and finance under section 3B of
125 chapter 7.

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

130 The commissioner may issue a student loan servicer license if the commissioner finds
131 that: (i) the applicant's financial condition is sound; (ii) the applicant's business has been
132 conducted and will be conducted honestly, fairly, equitably, carefully and efficiently and
133 consistent with this chapter; (iii)(A) if the applicant is an individual, the individual is properly
134 qualified and of good character; (B) if the applicant is a partnership, each partner is properly
135 qualified and of good character; (C) if the applicant is a corporation or association, the president,
136 chairperson of the executive committee, senior officer responsible for the corporation's business
137 and chief financial officer or any other person who performs similar functions as determined by
138 the commissioner, each director, each trustee and each shareholder owning at least 10 per cent of

139 each class of the securities of the corporation are properly qualified and of good character; and
140 (D) if the applicant is a limited liability company, each member is in all respects properly
141 qualified and of good character; (iv) no person on behalf of the applicant has knowingly made
142 any incorrect statement of a material fact in the application or in any report or statement made
143 pursuant to this chapter; (v) no person acting on behalf of the applicant has knowingly failed to
144 state any material fact necessary to give the commissioner any information required by the
145 commissioner; (vi) the applicant has paid the license and investigation fees under subsection (c);
146 and (vii) the applicant has met all other requirements as determined by the commissioner.

147 (e) A student loan servicer license shall be valid for 1 year as of a date determined by the
148 commissioner, unless suspended or revoked, and shall not be automatically renewed.

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

154 If an application for renewal of a student loan servicer license has been filed with the
155 commissioner on or before the date the previous license is to expire, the license sought to be
156 renewed shall continue in full force and effect until the issuance by of the renewal license or
157 until the commissioner has notified the licensee in writing of the commissioner's refusal to
158 renew the license, together with the grounds upon which that refusal is based. The commissioner
159 may refuse to renew a student loan servicer license for any reason that the commissioner may
160 refuse to issue an initial student loan servicer license.

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

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

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

179 Section 4. The commissioner may participate in a multistate licensing system for the
180 sharing of regulatory information and for the licensing and application, by electronic or other
181 means, of persons engaged in student loan servicing. The commissioner may establish
182 requirements for participation by an applicant in a multistate licensing system which may vary

183 from the provisions of this section. The commissioner may require a background investigation of
184 each applicant for a student loan servicer license by means of fingerprint and state and national
185 criminal history record checks by the department of criminal justice information services
186 pursuant to section 172 of chapter 6 and the Federal Bureau of Investigation.

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

192 Section 5. (a) If a licensee intends to carry on such business at any place in addition to the
193 address on the license, or plans to change the location of its place of business, the licensee shall
194 notify the commissioner, in writing, not less than 30 days before doing so, and shall pay a fee for
195 each additional location at a reasonable cost as determined by the commissioner. Such notice
196 shall contain the address of any additional or changed location and such other information as the
197 commissioner may require. A student loan servicer license shall be nontransferable and
198 nonassignable.

199 (b) A student loan servicer shall maintain adequate records of each student loan
200 transaction for at least 2 years following the final payment on the student loan or the assignment
201 of the student loan, whichever occurs first, or a longer period if required by law. The
202 commissioner may request these records from a student loan servicer and the servicer shall
203 comply with the request not later than 5 business days after it is received. The commissioner
204 may, upon request, grant a student loan servicer additional time to make such records available.

205 Section 6. A student loan servicer shall comply with all applicable federal laws and
206 regulations relating to student loan servicing. A violation of federal law or regulation shall be a
207 violation of this chapter and the commissioner may investigate pursuant to section 7.

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

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

215 If there is reason to believe that a person other than a licensee has violated this chapter,
216 the commissioner shall have the power to investigate as necessary. The commissioner may
217 examine the person who allegedly violated this chapter and may compel the production of
218 relevant books, records, accounts and documents.

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

224 All records of investigations and reports of examinations by the commissioner, including
225 workpapers, information derived from the reports or responses to the reports, and any copies
226 thereof in the possession of a student loan servicer under the supervision of the commissioner,

227 shall be confidential and privileged communications; provided, however that nothing in this
228 subsection shall interfere with the work of the office of the student loan ombudsman established
229 under section 34 of chapter 12 and that records shall be made public if it is in the public interest.
230 For the purposes of this subsection, records of investigation and reports of examinations shall
231 include records of investigation and reports of examinations conducted by a financial regulatory
232 agency of the federal government, any other state or foreign government which are considered
233 confidential by the agency or foreign government and which are in possession of the
234 commissioner. In a proceeding before a court, the court may issue a protective order in
235 appropriate circumstances to protect the confidentiality of the record and order that the record on
236 file with the court or filed in connection with the court proceeding be sealed and that the public
237 be excluded from any portion of the proceeding at which the record is disclosed. Copies of the
238 reports of examination shall be furnished to a licensee for the licensee's use only and shall not be
239 exhibited to any other person, organization or agency without prior written approval by the
240 commissioner. The commissioner may furnish to regulatory agencies of the federal government,
241 other states or foreign countries and to a law enforcement agency information, reports and
242 statements relating to the licensees under the commissioner's supervision as considered
243 appropriate.

244 (b) In an investigation or examination investigation conducted pursuant to this section,
245 the commissioner shall have free access to the documents and records of the student loan
246 servicer or any other person under examination or investigation. Unless the commissioner has
247 reasonable grounds to believe the documents or records of the student loan servicer or person
248 have been or are at risk of being altered or destroyed for the purposes of concealing a violation of

249 this chapter, the student loan servicer or owner of the documents and records shall have access to
250 the documents or records as necessary to conduct ordinary business affairs.

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

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

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

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

268 Section 8. A student loan servicer shall not engage in unfair methods of competition or
269 unfair or deceptive acts or practices. A violation of this chapter shall also be a violation of

270 chapter 93A. Nothing in this chapter shall preclude an action being brought under chapter 93A
271 or any other law.

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

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

276 SECTION 6. The secretary of administration and finance shall establish the fees required
277 under chapter 93L of the General Laws not later than December 31, 2019.

278 SECTION 7. The first report required under section 34 of chapter 12 of the General Laws
279 shall be submitted not later than January 1, 2021.

280 SECTION 8. Sections 1 and 3 shall take effect on September 1, 2019.

281 SECTION 9. Section 5 shall take effect on January 1, 2020.