

**SENATE . . . . . No. 129**

**The Commonwealth of Massachusetts**

PRESENTED BY:

*Eric P. Lesser*

*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:	
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	
<i>Julian Cyr</i>	<i>Cape and Islands</i>	
<i>Jack Lewis</i>	<i>7th Middlesex</i>	<i>1/23/2017</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/30/2017</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>1/31/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/31/2017</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>2/2/2017</i>
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>	<i>2/2/2017</i>
<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>	<i>2/3/2017</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>2/3/2017</i>

**SENATE . . . . . No. 129**

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By Mr. Lesser, a petition (accompanied by bill, Senate, No. 129) of Eric P. Lesser, Julian Cyr, Jack Lewis, Jason M. Lewis and other members of the General Court for legislation to establish a student loan bill of rights. Consumer Protection and Professional Licensure.

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**The Commonwealth of Massachusetts**

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**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. Section 24 of chapter 93 of the General Laws, as so appearing, is hereby  
2 amended by striking the definition of “servicing” and inserting thereof the following definition:-  
3           “Servicing”, receiving a scheduled periodic payment from a borrower pursuant to the  
4 terms of a loan, including amounts for escrow accounts, and making the payments to the owner  
5 of the loan or other third party of principal and interest and other payments with respect to the  
6 amounts received from the borrower as may be required pursuant to the terms of the servicing  
7 loan document or servicing contract. In the case of a home equity conversion mortgage or  
8 reverse mortgage as referenced in this section, servicing includes making payments to the  
9 borrower. In the case of a student education loan as referenced in this section, servicing includes  
10 applying the payments of principal and interest and other such payments with respect to the  
11 amounts received from a student loan borrower as may be required pursuant to the terms of a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

193 SECTION 5. Notwithstanding any general or special law to the contrary, the  
194 commissioner shall file a report on the work of the Student Loan Ombudsman annually with the  
195 clerks of the senate and house of representatives, the chairs of the house and senate committees  
196 on ways and means and the house and senate chairs of the joint committee on financial services  
197 beginning on January 1, 2018. The report shall include, but not be limited to: (1) the number of  
198 complaints received by the Student Loan Ombudsman from student loan borrowers; (2) the types  
199 of complaints received by the Student Loan Ombudsman from student loan borrowers; (3) any  
200 recommendations to improve the effectiveness of the position of Student Loan Ombudsman; and  
201 (4) any recommendations to improve regulation, oversight, and enforcement of the Division of  
202 Banks over the licensing and enforcement of student loan servicers.

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

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

208 SECTION 8. Sections 1, 2, 3 and 6, inclusive, shall take effect September 1, 2017.

209 SECTION 9. Section 4 shall take effect January 1, 2018.