

SENATE No. 2380

The Commonwealth of Massachusetts

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

SENATE, Thursday, March 29, 2018

The committee on Ways and Means to whom was referred the Senate Bill establishing a student loan bill of rights (Senate, No.129),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2380).

For the committee,
Karen E. Spilka

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 The ombudsman may share information with the division of banks to assist the division
22 in fulfilling its duties under section 3A of chapter 26.

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

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

31 (b) Annually, not later than January 1, the commissioner shall file a report on activities
32 related to student loans and student loan servicers, as defined in section 1 of chapter 93L, with
33 the clerks of the senate and house of representatives, the chairs of the house and senate

34 committees on ways and means and the house and senate chairs of the joint committee on
35 financial services.

36 The report shall include, but not be limited to: (i) the number of complaints received by
37 the division from student loan borrowers and the names of the student loan servicers against
38 whom complaints are filed; (ii) the types of complaints received by the division from student
39 loan borrowers; (iii) the types of resolutions reached for complaints received; and (iv)
40 recommendations to improve regulation, oversight and enforcement by the division over the
41 licensing and enforcement of student loan servicers. The report shall also include an overview of
42 any information received from the student loan ombudsman established in section 34 of chapter
43 12 concerning: (1) the number of complaints received by the student loan ombudsman: (2) the
44 types of complaints received by the student loan ombudsman; (3) the types of resolutions
45 reached by the student loan ombudsman; and (4) recommendations to improve the effectiveness
46 of the position of student loan ombudsman . The report shall ensure that all information included
47 in the report is aggregated and de-identified.

48 SECTION 3. The General Laws are hereby amended by inserting after chapter 93K the
49 following chapter:-

CHAPTER 93L.

STUDENT LOAN SERVICERS.

50 Section 1. The following words shall have the following meanings unless the context
51 clearly requires otherwise:

52 “Commissioner”, the commissioner of banks.

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

54 “Servicing”, receiving a scheduled periodic payment from a borrower pursuant to the
55 terms of a loan, including amounts for escrow accounts, and making the payments to the owner
56 of the loan or other third party of principal and interest and other payments with respect to the
57 amounts received from the borrower as may be required pursuant to the terms of the servicing
58 loan document or servicing contract, including applying the payments of principal and interest
59 and other payments with respect to the amounts received from a student loan borrower as may be
60 required pursuant to the terms of a student loan and performing other administrative services
61 with respect to a student loan.

62 “Student loan”, a loan primarily used to finance education or other school-related
63 expenses.

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

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

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

72 (b) The following persons shall be exempt from student loan servicer licensing
73 requirements: (i) banks and credit unions, including federal credit unions and out-of-state banks

74 and credit unions; (ii) wholly-owned subsidiaries of banks and credit unions; and (iii) operating
75 subsidiaries where each owner of the operating subsidiary is wholly owned by the same bank or
76 credit union.

77 (c) A person seeking to act as a student loan servicer shall submit an application for a
78 student loan servicer license in such form as the commissioner shall prescribe which may include
79 a requirement that an applicant shall provide: (i) a financial statement prepared by a certified
80 public accountant or a public accountant; (ii) a history of criminal convictions of the applicant;
81 or (iii) any other information deemed necessary.

82 The application for a student loan servicer license shall be accompanied by a
83 nonrefundable license fee and a nonrefundable investigation fee, the amount of each which shall
84 be determined annually by the secretary of administration and finance under section 3B of
85 chapter 7.

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

90 The commissioner may issue a student loan servicer license if the commissioner finds
91 that: (i) the applicant's financial condition is sound; (ii) the applicant's business will be
92 conducted honestly, fairly, equitably, carefully and efficiently and consistent with this chapter;
93 (iii)(A) if the applicant is an individual, the individual is properly qualified and of good
94 character; (B) if the applicant is a partnership, each partner is properly qualified and of good
95 character; (C) if the applicant is a corporation or association, the president, chairperson of the

96 executive committee, senior officer responsible for the corporation's business and chief financial
97 officer or any other person who performs similar functions as determined by the commissioner,
98 each director, each trustee and each shareholder owning at least 10 per cent of each class of the
99 securities of the corporation are properly qualified and of good character; and (D) if the applicant
100 is a limited liability company, each member is in all respects properly qualified and of good
101 character; (iv) no person on behalf of the applicant has knowingly made any incorrect statement
102 of a material fact in the application or in any report or statement made pursuant to this chapter;
103 (v) no person acting on behalf of the applicant has knowingly failed to state any material fact
104 necessary to give the commissioner any information required by the commissioner; (vi) the
105 applicant has paid the license and investigation fees under subsection (c); and (vii) the applicant
106 has met all other requirements as determined by the commissioner.

107 (e) A student loan servicer license shall be valid for 1 year unless suspended or revoked
108 and shall not be automatically renewed.

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

114 If an application for renewal of a student loan servicer license has been filed with the
115 commissioner on or before the date the previous license is to expire, the license sought to be
116 renewed shall continue in full force and effect until the issuance by of the renewal license or
117 until the commissioner has notified the licensee in writing of the commissioner's refusal to

118 renew the license, together with the grounds upon which that refusal is based. The commissioner
119 may refuse to renew a student loan servicer license for any reason that the commissioner may
120 refuse to issue an initial student loan servicer license.

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

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

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

139 Section 4. The commissioner may participate in a multistate licensing system for the
140 sharing of regulatory information and for the licensing and application, by electronic or other
141 means, of persons engaged in student loan servicing. The commissioner may establish
142 requirements for participation by an applicant in a multistate licensing system which may vary
143 from the provisions of this section. The commissioner may require a background investigation of
144 each applicant for a student loan servicer license by means of fingerprint and state and national
145 criminal history record checks by the department of criminal justice information services
146 pursuant to section 172 of chapter 6 and the Federal Bureau of Investigation.

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

152 Section 5. (a) No person licensed as a student loan servicer shall be licensed under a
153 name and place of business other than that named in the license. Before changing the location of
154 its place of business, a licensed student loan servicer shall provide written notice to the
155 commissioner. Not more than 1 place of business shall be maintained under the same student
156 loan servicer license. A student loan servicer license shall be nontransferable and nonassignable.

157 (b) A student loan servicer shall maintain adequate records of each student loan
158 transaction for at least 2 years following the final payment on the student loan or the assignment
159 of the student loan, whichever occurs first, or a longer period if required by law. The
160 commissioner may request these records from a student loan servicer and the servicer shall

161 comply with the request not later than 5 business days after it is received. The commissioner
162 may, upon request, grant a student loan servicer additional time to make such records available.

163 (c) A student loan servicer shall comply with all applicable federal laws and regulations
164 relating to student loan servicing. A violation of a federal law or regulation shall be a violation of
165 this section and the commissioner may investigate pursuant to section 6.

166 Section 6. (a) The commissioner shall conduct investigations and examinations for the
167 purpose of: (i) initial licensing, license renewal, license suspension, license revocation or
168 termination or determining compliance with this chapter; and (ii) investigating violations or
169 complaints arising under this chapter.

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

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

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

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

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

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

197 Section 7. A student loan servicer shall not engage in unfair methods of competition or
198 unfair or deceptive acts or practices. A violation of this chapter shall also be a violation of
199 chapter 93A. Nothing in this chapter shall preclude an action being brought under chapter 93A
200 or any other law.

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

203 Section 8. The commissioner shall promulgate rules and regulations necessary to
204 implement this chapter.

205 SECTION 4. The secretary of administration and finance shall establish the fees required
206 under chapter 93L of the General Laws not later than December 31, 2019.

207 SECTION 5. The first report required under subsection (c) of section 3A of chapter 26 of
208 the General Laws shall be submitted not later than January 1, 2021.

209 SECTION 6. Sections 1 and 2 shall take effect on September 1, 2019.

210 SECTION 7. Section 3 shall take effect on January 1, 2020.