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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO EDUCATION -- THE STUDENT LOAN BILL OF RIGHTS

Introduced By: Representatives McNamara, Maldonado, Corvese, Regunberg, and Shekarchi

Date Introduced: January 08, 2016

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 16 of the General Laws entitled "EDUCATION" is hereby amended
2 by adding thereto the following chapter:

3 CHAPTER 59.1

4 THE STUDENT LOAN BILL OF RIGHTS

5 **16-59.1-1. Definitions.** -- As used in this chapter:

6 (1) "Commissioner" means the commissioner of postsecondary education.

7 (2) "Division" means the division of higher education assistance established pursuant to
8 the provisions of chapter 57 of title 16.

9 (3) "Ombudsman" means the student loan ombudsman established pursuant to the
10 provisions of this chapter.

11 (4) "Student loan borrower" means:

12 (i) Any resident of this state who has received or agreed to pay a student education loan;

13 or

14 (ii) Any person who shares responsibility with such resident for repaying the student
15 education loan.

16 (5) "Student loan servicer" means any person, wherever located, responsible for the
17 servicing of any student education loan to any student loan borrower.

18 (6) "Servicing" means:

19 (i) Receiving any scheduled periodic payments from a student loan borrower pursuant to

1 the terms of a student education loan;

2 (ii) Applying the payments of principal and interest and such other payments with respect
3 to the amounts received from a student loan borrower, as may be required pursuant to the terms of
4 a student education loan; and

5 (iii) Performing other administrative services with respect to a student education loan.

6 (7) "Student education loan" means any loan primarily for personal use to finance
7 education or other school-related expenses.

8 **16-59.1-2. Appointment of student loan ombudsman. --** The office of the
9 commissioner of postsecondary education shall, within available appropriations, designate a
10 student loan ombudsman within the division of higher education assistance to provide timely
11 assistance and support to any student loan borrower of any student education loan.

12 **16-59.1-3. Powers and duties of student loan ombudsman. --** (a) The student loan
13 ombudsman, in consultation with the commissioner of postsecondary education, shall:

14 (1) Receive, review and attempt to resolve any complaints from student loan borrowers,
15 including, but not limited to, attempts to resolve such complaints in collaboration with institutions
16 of higher education, student loan servicers, and any other participants in student loan lending,
17 including, but not limited to, the University of Rhode Island, Rhode Island College, the
18 Community College of Rhode Island, the council on postsecondary education, the office of the
19 postsecondary commissioner, the board of education, the office of higher education, the Rhode
20 Island student loan authority, and the Rhode Island division of higher education assistance;

21 (2) Compile and analyze data on student loan borrower complaints as described in
22 subsection (b)(1) of this section;

23 (3) Assist student loan borrowers to understand their rights and responsibilities under the
24 terms of student education loans;

25 (4) Provide information to the public, agencies, legislators and others regarding the
26 problems and concerns of student loan borrowers and make recommendations for resolving those
27 problems and concerns;

28 (5) Analyze and monitor the development and implementation of federal, state and local
29 laws, regulations and policies relating to student loan borrowers and recommend any changes that
30 the student loan ombudsman deems necessary;

31 (6) Review the complete student education loan history for any student loan borrower
32 who has provided written consent for such review;

33 (7) Disseminate information concerning the availability of the student loan ombudsman
34 to assist student loan borrowers and potential student loan borrowers, as well as public

1 institutions of higher education, student loan servicers and any other participant in student
2 education loan lending, with any student loan servicing concerns; and

3 (8) Take any other actions necessary to fulfill the duties of the student loan ombudsman
4 as set forth in this subsection.

5 (b) On or before October 1, 2016, the student loan ombudsman, in consultation with the
6 commissioner, shall, within available appropriations, establish and maintain a student loan
7 borrower education course that shall include educational presentations and materials regarding
8 student education loans. Such program shall include, but not be limited to, key loan terms,
9 documentation requirements, monthly payment obligations, income-based repayment options,
10 loan forgiveness and disclosure requirements.

11 **16-59.1-4. Report by commissioner to the general assembly.** -- On or before January 1,
12 2017, and annually thereafter, the commissioner shall submit a report to the general assembly, in
13 which the commissioner shall report on:

14 (1) The implementation of this chapter;

15 (2) The overall effectiveness of the student loan ombudsman position; and

16 (3) Additional steps that need to be taken for the division of higher education assistance
17 to gain regulatory control over the licensing and enforcement of student loan servicers.

18 **16-59.1-5. Student loan ombudsman account.** -- (a)(1) There is established an account
19 to be known as the "student loan ombudsman account" which shall be a separate, non-lapsing
20 account within the division of higher education assistance. The account shall contain the monies
21 described in this section and any other monies required by law to be deposited in the account.
22 Monies in the account shall be expended by the ombudsman for the purpose of administering the
23 provisions of this section.

24 (2) The account established under this section shall contain any licensing or investigation
25 fees collected pursuant to this chapter.

26 **16-59.1-6. Licensing of student loan servicers.** -- (a)(1) Effective July 1, 2017, no
27 person shall act as a student loan servicer, directly or indirectly, without first obtaining a license
28 from the commissioner of postsecondary education pursuant to the provisions of this section,
29 unless such person is exempt from licensure pursuant to the provisions of subsection (a)(2) of this
30 section.

31 (2) The following persons are exempt from student loan servicer licensing requirements:

32 (i) Any Rhode Island bank, out-of-state bank, Rhode Island credit union, federal credit
33 union or out-of-state credit union;

34 (ii) Any wholly owned subsidiary of any such bank or credit union; and

1 (iii) Any operating subsidiary where each owner of such operating subsidiary is wholly
2 owned by the same bank or credit union.

3 (b) Any person seeking to act within this state as a student loan servicer shall make a
4 written application to the commissioner for an initial license in such form as the commissioner
5 prescribes. Such application shall be accompanied by:

6 (1) A financial statement prepared by a certified public accountant or a public accountant,
7 the accuracy of which is sworn to under oath before a notary public by the proprietor, a general
8 partner or a corporate officer or a member duly authorized to execute such documents;

9 (2) The history of criminal convictions of the:

10 (i) Applicant;

11 (ii) Partners, if the applicant is a partnership;

12 (iii) Members, if the applicant is a limited liability company or association; or

13 (iv) Officers, directors and principal employees, if the applicant is a corporation;

14 (3) Sufficient information pertaining to the history of criminal convictions of such
15 applicant, partners, members, officers, directors or principal employees as the commissioner
16 deems necessary to make the findings required under this section;

17 (4) A nonrefundable license fee of one thousand dollars (\$1,000); and

18 (5) A nonrefundable investigation fee of eight hundred dollars (\$800).

19 (c) The commissioner may conduct a state and national criminal history records check or
20 BCI of the applicant and of each partner, member, officer, director and principal employee of
21 such applicant.

22 **16-59.1-7. Investigation of applicants.** -- (a) Upon the filing of an application for an
23 initial license and the payment of the fees for license and investigation, the commissioner shall
24 investigate the financial condition and responsibility, financial and business experience, character
25 and general fitness of the applicant. The commissioner may issue a license if the commissioner
26 finds that:

27 (1) The applicant's financial condition is sound;

28 (2) The applicant's business will be conducted honestly, fairly, equitably, carefully and
29 efficiently within the purposes and intent of this chapter, and in a manner commanding the
30 confidence and trust of the community;

31 (3)(i) If the applicant is an individual, such individual is in all respects properly qualified
32 and of good character;

33 (ii) If the applicant is a partnership, each partner is in all respects properly qualified and
34 of good character;

1 (iii) If the applicant is a corporation or association, the president, chairperson of the
2 executive committee, senior officer responsible for the corporation's business and chief financial
3 officer or any other person who performs similar functions as determined by the commissioner,
4 each director, each trustee and each shareholder owning ten percent (10%) or more of each class
5 of the securities of such corporation is in all respects properly qualified and of good character; or

6 (iv) If the applicant is a limited liability company, each member is in all respects properly
7 qualified and of good character;

8 (4) No person on behalf of the applicant knowingly has made any incorrect statement of a
9 material fact in the application, or in any report or statement made pursuant to the provisions of
10 this chapter;

11 (5) No person on behalf of the applicant knowingly has omitted to state any material fact
12 necessary to give the commissioner any information lawfully required by the commissioner;

13 (6) The applicant has paid all investigation fees and the license fees required under this
14 section; and

15 (7) The applicant has met any other similar requirements as determined by the
16 commissioner.

17 **16-59.1-8. License expiration and renewal. --** (a) A license issued pursuant to this
18 chapter shall expire at the close of business on September 30 of the odd numbered year following
19 its issuance, unless renewed or earlier surrendered, suspended or revoked pursuant to the
20 provisions of this chapter. Not later than fifteen (15) days after a licensee ceases to engage in the
21 business of student loan servicing in this state for any reason, including a business decision to
22 terminate operations in this state, license revocation, bankruptcy or voluntary dissolution, such
23 licensee shall provide written notice of surrender to the commissioner and shall surrender to the
24 commissioner its license for each location in which such licensee has ceased to engage in such
25 business. The written notice of surrender shall identify the location where the records of the
26 licensee will be stored and the name, address and telephone number of an individual authorized to
27 provide access to the records. The surrender of a license does not reduce or eliminate the
28 licensee's civil or criminal liability arising from acts or omissions occurring prior to the surrender
29 of the license, including any administrative actions undertaken by the commissioner to revoke or
30 suspend a license, assess a civil penalty, order restitution or exercise any other authority provided
31 to the commissioner.

32 (b) A license may be renewed for the ensuing twenty-four (24) month period upon the
33 filing of an application containing all required documents and fees as provided in this chapter.
34 Such renewal application shall be filed on or before September 1 of the year in which the license

1 expires. Any renewal application filed with the commissioner after September 1 shall be
2 accompanied by a one hundred dollar (\$100) late fee.

3 (c) If an application for a renewal license has been filed with the commissioner on or
4 before the date the license expires, the license sought to be renewed shall continue in full force
5 and effect until the issuance by the commissioner of the renewal license applied for or until the
6 commissioner has notified the licensee in writing of the commissioner's refusal to issue such
7 renewal license together with the grounds upon which such refusal is based. The commissioner
8 may refuse to issue a renewal license on any ground on which the commissioner might refuse to
9 issue an initial license.

10 (d) If the commissioner determines that a check filed with the commissioner to pay a
11 license or renewal fee has been dishonored, the commissioner shall automatically suspend the
12 license or the renewal license that has been issued but is not yet effective. The commissioner shall
13 give the licensee notice of the automatic suspension pending proceedings for revocation or refusal
14 to renew and an opportunity for a hearing on such actions in accordance with the provisions of
15 this chapter.

16 (e) The applicant or licensee shall notify the commissioner, in writing, of any change in
17 the information provided in its initial application for a license or its most recent renewal
18 application for such license, as applicable, not later than ten (10) business days after the
19 occurrence of the event that results in such information becoming inaccurate.

20 (f) The commissioner may deem an application for a license abandoned if the applicant
21 fails to respond to any request for information required under this chapter, or any regulations
22 adopted pursuant to said sections. The commissioner shall notify the applicant, in writing, that if
23 the applicant fails to submit such information not later than sixty (60) days after the date on
24 which such request for information was made, the application shall be deemed abandoned. An
25 application filing fee paid prior to the date an application is deemed abandoned pursuant to this
26 subsection shall not be refunded. Abandonment of an application pursuant to this subsection shall
27 not preclude the applicant from submitting a new application for a license under the provisions of
28 this chapter.

29 **16-59.1-9. Licensee to act under license. --** No person licensed to act within this state as
30 a student loan servicer shall do so under any other name or at any other place of business than
31 that named in the license.

32 Any change of location of a place of business of a licensee shall require prior written
33 notice to the commissioner. Not more than one place of business shall be maintained under the
34 same license but the commissioner may issue more than one license to the same licensee upon

1 compliance with the provisions of this chapter as to each new licensee. A license shall not be
2 transferable or assignable.

3 **16-59.1-10. Maintenance of records. --** (a) Each student loan servicer licensee and
4 persons exempt from licensure pursuant to this chapter shall maintain adequate records of each
5 student education loan transaction for not less than two (2) years following the final payment on
6 such student education loan or the assignment of such student education loan, whichever occurs
7 first, or such longer period as may be required by any other provision of law.

8 (b) If requested by the commissioner, each student loan servicer shall make such records
9 available or send such records to the commissioner by registered or certified mail, return receipt
10 requested, or by any express delivery carrier that provides a dated delivery receipt, not later than
11 five (5) business days after requested by the commissioner to do so. Upon request, the
12 commissioner may grant a licensee additional time to make such records available or send the
13 records to the commissioner.

14 **16-59.1-11. Prohibited conduct. --** (a) No student loan servicer shall:

15 (1) Directly or indirectly employ any scheme, device or artifice to defraud or mislead
16 student loan borrowers;

17 (2) Engage in any unfair or deceptive practice toward any person or misrepresent or omit
18 any material information in connection with the servicing of a student education loan, including,
19 but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or
20 claimed to be due on a student education loan, the terms and conditions of the loan agreement or
21 the borrower's obligations under the loan;

22 (3) Obtain property by fraud or misrepresentation;

23 (4) Knowingly misapply or recklessly apply student education loan payments to the
24 outstanding balance of a student education loan;

25 (5) Knowingly or recklessly provide inaccurate information to a credit bureau, thereby
26 harming a student loan borrower's creditworthiness;

27 (6) Fail to report both the favorable and unfavorable payment history of the student loan
28 borrower to a nationally recognized consumer credit bureau at least annually if the student loan
29 servicer regularly reports information to a credit bureau;

30 (7) Refuse to communicate with an authorized representative of the student loan borrower
31 who provides a written authorization signed by the student loan borrower, provided the student
32 loan servicer may adopt procedures reasonably related to verifying that the representative is in
33 fact authorized to act on behalf of the student loan borrower; or

34 (8) Negligently make any false statement or knowingly and willfully make any omission

1 of a material fact in connection with any information or reports filed with a governmental agency
2 or in connection with any investigation conducted by the commissioner or another governmental
3 agency.

4 **16-59.1-12. Conduct of investigations. --** (a) In addition to any authority provided under
5 this chapter, the commissioner shall have the authority to conduct investigations and
6 examinations as follows:

7 (1) For purposes of initial licensing, license renewal, license suspension, license
8 revocation, or termination, or general or specific inquiry or investigation to determine compliance
9 with this chapter, the commissioner may access, receive and use any books, accounts, records,
10 files, documents, information or evidence including, but not limited to:

11 (i) Criminal, civil and administrative history information;

12 (ii) Personal history and experience information, including independent credit reports
13 obtained from a consumer reporting agency described in the Fair Credit Reporting Act, 15 U.S.C.
14 §1681a; and

15 (iii) Any other documents, information or evidence the commissioner deems relevant to
16 the inquiry or investigation regardless of the location, possession, control or custody of such
17 documents, information, or evidence.

18 (2) For the purposes of investigating violations or complaints arising under this chapter,
19 or for the purposes of examination, the commissioner may review, investigate or examine any
20 student loan servicer licensee or person subject to said chapter as often as necessary in order to
21 carry out the purposes of this chapter. The commissioner may direct, subpoena or order the
22 attendance of and examine under oath all persons whose testimony may be required about the
23 student education loan or the business or subject matter of any such examination or investigation,
24 and may direct, subpoena or order such person to produce books, accounts, records, files, and any
25 other documents the commissioner deems relevant to the inquiry.

26 (b) In making any examination or investigation authorized by this section, the
27 commissioner may control access to any documents and records of the student loan servicer
28 licensee or person under examination or investigation. The commissioner may take possession of
29 the documents and records or place a person in exclusive charge of the documents and records in
30 the place where they are usually kept. During the period of control, no person shall remove or
31 attempt to remove any of the documents and records except pursuant to a court order or with the
32 consent of the commissioner. Unless the commissioner has reasonable grounds to believe the
33 documents or records of the student loan servicer licensee or person have been, or are at risk of
34 being, altered or destroyed for purposes of concealing a violation of this chapter, the student loan

1 servicer licensee or owner of the documents and records shall have access to the documents or
2 records as necessary to conduct its ordinary business affairs.

3 (c) In order to carry out the purposes of this section, the commissioner may:

4 (1) Retain attorneys, accountants or other professionals and specialists as examiners,
5 auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

6 (2) Enter into agreements or relationships with other government officials or regulatory
7 associations in order to improve efficiencies and reduce regulatory burden by sharing resources,
8 standardized or uniform methods or procedures, and documents, records, information or evidence
9 obtained under this section;

10 (3) Use, hire, contract or employ public or privately available analytical systems,
11 methods or software to examine or investigate the student loan servicer licensee or person subject
12 to the provisions of this chapter;

13 (4) Accept and rely on examination or investigation reports made by other government
14 officials, within or without this state; and

15 (5) Accept audit reports made by an independent certified public accountant for the
16 student loan servicer licensee or person subject to the provisions of this chapter in the course of
17 that part of the examination covering the same general subject matter as the audit and may
18 incorporate the audit report in the report of examination, report of investigation or other writing
19 of the commissioner.

20 (d) The authority of this section shall remain in effect, whether such student loan servicer
21 licensee or person subject to the provisions of this chapter, acts or claims to act under any
22 licensing or registration law of this state, or claims to act without such authority.

23 (e) No student loan servicer licensee or person subject to investigation or examination
24 under this section may knowingly withhold, abstract, remove, mutilate, destroy or secrete any
25 books, records, computer records or other information.

26 **16-59.1-13. Suspension or revocation of license. --** (a) The commissioner may suspend,
27 revoke or refuse to renew any license issued under the provisions of this chapter, or take any
28 other action provided for in this chapter, if the commissioner finds that:

29 (1) The licensee has violated any provision of this chapter or any regulation or order
30 lawfully made pursuant to and within the authority of this chapter; or

31 (2) Any fact or condition exists which, if it had existed at the time of the original
32 application for the license, clearly would have warranted a denial of such license. No abatement
33 of the license fee shall be made if the license is surrendered, revoked or suspended prior to the
34 expiration of the period for which it was issued.

1 **(b) Whenever it appears to the commissioner that any person has violated, is violating or**
2 **is about to violate any of the provisions of this chapter, or any regulation adopted pursuant to said**
3 **sections, or any licensee or any owner, director, officer, member, partner, shareholder, trustee,**
4 **employee, or agent of such licensee has committed any fraud, engaged in dishonest activities or**
5 **made any misrepresentation, the commissioner may take action against such person or licensee in**
6 **accordance with the provisions of this chapter.**

7 **16-59.1-14. Student loan servicer compliance. -- A student loan servicer shall comply**
8 **with all applicable federal laws and regulations relating to student loan servicing, including, but**
9 **not limited to, the Truth-in-Lending Act, 15 U.S.C. §1601 et seq., as from time to time amended,**
10 **and the regulations promulgated thereunder. In addition to any other remedies provided by law, a**
11 **violation of any such federal law or regulation shall be deemed a violation of this section and a**
12 **basis upon which the commissioner may take enforcement action pursuant to the provisions of**
13 **this chapter.**

14 **16-59.1-15. Rules and regulations. -- The commissioner of postsecondary education**
15 **may promulgate rules and regulations to implement the provisions of this chapter.**

16 SECTION 2. This act shall take effect on July 1, 2016.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO EDUCATION -- THE STUDENT LOAN BILL OF RIGHTS

1 This act would authorize the creation of the position of student loan ombudsman within
2 the division of higher education assistance of the office of the commissioner of postsecondary
3 education.

4 The duties of the ombudsman would be to attempt to resolve complaints from student
5 loan borrowers, compile and analyze data on such complaints, and to otherwise assist student loan
6 borrowers. The act would also provide that the commissioner of postsecondary education would
7 review and evaluate applications for licensure as a student loan issuer.

8 This act would take effect on July 1, 2016.

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