

2019 -- S 0737 SUBSTITUTE A

LC002289/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO FINANCIAL INSTITUTIONS -- STUDENT LOAN BILL OF RIGHTS ACT

Introduced By: Senators Euer, Gallo, Metts, DiPalma, and Cano

Date Introduced: March 28, 2019

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 19 of the General Laws entitled "FINANCIAL INSTITUTIONS" is
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 33

4 STUDENT LOAN BILL OF RIGHTS ACT

5 **19-33-1. Title.**

6 This chapter shall be known and may be cited as the "Student Loan Bill of Rights Act."

7 **19-33-2. Definitions.**

8 As used in this chapter:

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

10 (2) "Department" means the department of business regulation, division of banking.

11 (3) "Director" means the director of the department of business regulation or designee.

12 (4) "Distressed borrower" means a student loan education borrower who is not considered
13 current on their student education loan payments by the student loan servicer.

14 (5) "Student education loan" means any loan made to a student loan borrower primarily
15 for personal use to finance postsecondary education or other school-related expenses, and does
16 not include an extension of credit under an open-end consumer credit plan, a reverse mortgage
17 transaction, a residential mortgage transaction, or any other loan that is secured by real property
18 or a dwelling.

19 (6) "Student loan borrower" means:

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

3 (ii) Any person who shares responsibility, as a guarantor or by other legal obligation,
4 with such resident for repaying the postsecondary student education loan for another.

5 (7) "Student loan servicer" means any person or entity who engages in student loan
6 servicing as defined in this chapter.

7 (8) "Student loan servicing" or "servicing" means:

8 (i)(A) Receiving any scheduled periodic payments from a student loan borrower or
9 notification of such payments; and

10 (B) Applying payments to the student loan borrower's account pursuant to the terms of
11 the student education loan or of the contract governing the servicing;

12 (ii) During a period when no payment is required on a student education loan,
13 maintaining account records for the loan; and

14 (iii) Communicating with the student loan borrower regarding the loan, on behalf of the
15 loan's holder; or

16 (iv) Interactions with a student loan borrower, including activities to help prevent default
17 on obligations arising from student education loans, conducted to facilitate the activities
18 described in this section.

19 **19-33-3. Borrower assistance, education, and complaints.**

20 (a) The department of attorney general's consumer protection unit, in collaboration with
21 the director, general treasurer, and commissioner, shall:

22 (1) Receive, review, and attempt to resolve complaints from student loan borrowers;

23 (2) Compile and analyze data on student loan borrower complaints;

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

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

29 (5) Share information concerning the availability of the consumer protection unit to assist
30 student loan borrowers and potential student loan borrowers, as well as public institutions of
31 higher education, student loan servicers, and any other participant in student education loan
32 lending with any student loan servicing concerns;

33 (6) Take any other actions necessary to fulfill the borrower assistance, education, and
34 complaints-related duties in this chapter; and

1 (b) The attorney general, the director, the general treasurer, and the commissioner, or
2 designees, shall meet at least once per quarter to coordinate their efforts under this chapter.

3 **19-33-4. Registration of student loan servicers.**

4 (a) Each person or entity that services any student education loan issued to a student loan
5 borrower after July 1, 2019, shall register with the department as a student loan servicer no later
6 than September 30, 2019, or within thirty (30) days of conducting servicing of student education
7 loans, whichever is earlier.

8 (b) The registration provisions of this chapter shall not apply to:

9 (1) Any person or entity that services fewer than six (6) student education loans in this
10 state during any consecutive twelve (12) month period; and

11 (2) Any person or entity that services loans for education other than postsecondary
12 education.

13 (c) As part of that registration, the person or entity shall:

14 (1) Complete a registration in the form promulgated by the department providing the
15 information requested by the application;

16 (2) Pay an annual registration fee of one thousand dollars (\$1,000);

17 (3) Provide a bond in which the registrant shall be the obligor, and which shall run to the
18 state for the use of the state and of the person who may have a cause of action against the obligor
19 of the bond under the provisions of this chapter. The bond shall be perpetual and shall be
20 conditioned upon the obligor conforming to the provisions of this chapter and all regulations
21 thereunder and the obligor will pay to the state and to any person all money that may become due
22 or owing to the state or to the person from the obligor under the provisions of this chapter. The
23 bond shall provide for notice directly to the department in the manner specified by the
24 department, if the bond is cancelled by the surety for any reason. The bond shall be in the sum of
25 fifty thousand dollars (\$50,000).

26 (4) Appoint, and thereafter maintain, a resident agent in this state with authority to accept
27 service of process for the registrant in this state, including the process of garnishment:

28 (i) Service of process upon the agent shall be deemed sufficient service upon the
29 registrant; and

30 (ii) Any process, including the process of garnishment, may be served upon the director,
31 as agent of the registrant, in the event that no resident agent can be found upon whom service can
32 be made, or the registrant has failed to designate a resident agent as required.

33 (d) No registration shall be transferable or assignable. A change in ownership of less than
34 twenty-five percent (25%) of the voting stock or equity interests of a registrant shall not be

1 considered a transfer or assignment of the registration. A change in ownership of twenty-five
2 percent (25%) or more of the voting stock or equity interests shall require notification to the
3 department, and registration by the transferee/assignee within fifteen (15) days of the change in
4 ownership. A change in name shall require notification to the department within fifteen (15) days.

5 (e) Any registrant shall, within twenty-four (24) hours after actual knowledge, notify the
6 department of the occurrence of any of the following events:

7 (1) The institution of bankruptcy, receivership, reorganization, or insolvency proceedings
8 regarding a registrant;

9 (2) The institution of any adverse government action against a registrant; or

10 (3) Any felony indictment or conviction of any registrant or any officers, directors,
11 owners, employees, members, or partners thereof.

12 (f) Student loan servicers shall designate and provide contact information for an
13 individual to represent the student loan servicer in communications with the department. Such
14 information shall be updated within ten (10) days of any change thereto.

15 (g) Registration shall be valid for one calendar year, and student loan servicers shall be
16 required to renew their registration with the department annually.

17 (h) The department may assess a fine of ten thousand dollars (\$10,000) on any student
18 loan servicer that services student education loans for thirty (30) or more days without registering
19 and complying with the conditions provided in this section.

20 (i) The department may share any information gathered through its registration or
21 examination of student loan servicers with the attorney general.

22 **19-33-5. Servicer registration account established.**

23 There is established a restricted receipt account to be known as the "servicer registration
24 account" which shall be a separate account within the department. Registration fees and other
25 monies, excluding examination fees pursuant to § 19-33-9, received by the department pursuant
26 to the terms of this chapter shall be deposited into the account. Monies deposited in the account
27 shall be transferred to the department of attorney general's student loan consumer protection
28 account at the request of the attorney general and shall be expended for the purpose of
29 administering the provisions of this chapter.

30 **19-33-6. Maintenance of records.**

31 (a) Each student loan servicer shall maintain complete records of each student education
32 loan transaction, including recordings of communications with borrowers, for not less than two

33 (2) years following the final payment on such student education loan or the assignment of such
34 student education loan, whichever occurs first, or any longer period as may be required by any

1 other provision of the general or public laws.

2 (b) If requested by the division of banking, each student loan servicer shall make all
3 records available, not later than five (5) business days after requested. Upon request, the
4 department may grant a student loan servicer additional time to make such records available.

5 **19-33-7. Reporting requirements.**

6 (a) Each registrant shall annually, on or before March 31, file a report with the
7 department, giving any relevant information that the department may reasonably require
8 concerning the business and operations during the preceding calendar year of registrant within the
9 state. At the time of filing each report, the sum of fifty-five dollars (\$55.00) per registration shall
10 be paid by the registrant to the department. Any registrant that delays the transmission of any
11 report required by the provisions of this chapter beyond the limit, unless additional time is
12 granted, in writing, for good cause, the department shall assess a penalty of twenty-five dollars
13 (\$25.00) for each day of the delay.

14 **19-33-8. Responsibilities of student loan servicers.**

15 (a) A student loan servicer shall provide annually, and at the request of a student loan
16 borrower, the terms of their loan, progress toward repayment, and eligibility for any loan relief
17 programs including, but not limited to, income driven repayment plans, public service loan
18 forgiveness, forbearance and deferment.

19 (b) A student loan servicer shall establish policies and procedures, and implement them
20 consistently, in order to facilitate evaluation of private student loan alternative repayment
21 arrangement requests, including providing accurate information regarding any private student
22 loan alternative repayment arrangements that may be available to the borrower through the
23 promissory note, or that may have been marketed to the borrower through marketing materials.

24 (c) A private student loan alternative repayment arrangement shall consider the
25 affordability of repayment plans for a distressed borrower, as well as the investor, guarantor, and
26 insurer guidelines, and previous outcome and performance information.

27 (d) If a student loan servicer offers private student loan repayment arrangements, a
28 student loan servicer shall consistently present and offer those arrangements to borrowers with
29 similar financial circumstances.

30 (e) If a borrower inquires of a servicer of private student loans about consolidating or
31 refinancing a federal student loan into a private student loan, the servicer of private student loans
32 must disclose in advance of the refinancing or consolidation, any benefits or protections exclusive
33 to federal student loans that may be lost as a result of the consolidation or refinancing.

34 (f) A student loan servicer shall respond to a written inquiry from a student loan

1 borrower, or the representative of a student loan borrower, within ten (10) business days after
2 receipt of the request, and provide information relating to the request and, if applicable, the action
3 the student loan servicer will take to correct the account or an explanation for the student loan
4 servicer's position that the borrower's account is correct.

5 (1) The ten (10) day period described in subsection (e) of this section may be extended
6 for not more than fifteen (15) days, if before the end of the ten (10) day period the student loan
7 servicer, notifies the borrower or the borrower's representative of the extension, and the reasons
8 for the delay in responding.

9 (2) After receipt of a written request related to a credit reporting dispute on a borrower's
10 payment on a student education loan, a student loan servicer shall not furnish adverse information
11 to a consumer reporting agency regarding a payment that is the subject of the written inquiry.

12 (g) Except as provided by federal law or required by a student loan agreement, a student
13 loan servicer shall inquire of a borrower how to apply an overpayment to a student education
14 loan. A borrower's direction on how to apply an overpayment to a student education loan shall
15 stay in effect for any future overpayments during the term of a student education loan until the
16 borrower provides different directions. For purposes of this section, "overpayment" means a
17 payment on a student education loan in excess of the monthly amount due from a borrower on a
18 student education loan, also commonly referred to as a prepayment.

19 (h) Where a borrower has multiple loans at the same level of delinquency, a student loan
20 servicer shall apply partial payments in a manner that minimizes late fees and negative credit
21 reporting by applying such payments to satisfy as many individual loan payments as possible on a
22 borrower's account. For purposes of this section, "partial payment" means a payment on a student
23 loan account that contains multiple individual loans in an amount less than the amount necessary
24 to satisfy the outstanding payment due on all loans in the student loan account, also commonly
25 referred to as an underpayment.

26 (i) In the event of the sale, assignment, or other transfer of the servicing of a student
27 education loan that results in a change in the identity of the person to whom a student loan
28 borrower is required to send payments or direct any communication concerning the student
29 education loan, the following provisions apply:

30 (1) As a condition of a sale, an assignment, or any other transfer of the servicing of a
31 student education loan, a student loan lender shall require the new student loan servicer to honor
32 all benefits originally represented as available to a student loan borrower during the repayment of
33 the student education loan and preserve the availability of the benefits, including any benefits for
34 which the student loan borrower has not yet qualified.

1 (2) A student loan servicer shall transfer to the new student loan servicer all records
2 regarding the student loan borrower, the account of the student loan borrower, and the student
3 education loan of the student loan borrower.

4 (3) The records required under subsection (h)(2) of this section shall include the
5 repayment status of the student loan borrower and any benefits associated with the student
6 education loan of the student loan borrower.

7 (4) The student loan servicer shall complete the transfer of records required under
8 subsection (h)(2) of this section within forty-five (45) days after the sale, assignment, or other
9 transfer of the servicing of a student education loan.

10 (5) The parties shall notify all student loan borrowers impacted by the sale, assignment,
11 or other transfer of the servicing of a student education loan at least seven (7) days before the next
12 payment on the loan is due. Notice must include: the identity of the new loan holder and/or
13 servicer, the effective date of the transfer, the date on which the old servicer will no longer accept
14 payments, the date on which the new servicer will begin to accept payments, and contact and
15 billing information for loan payments.

16 (j) A student loan servicer that services a student education loan shall adopt policies and
17 procedures to verify that the student loan servicer has received all records regarding the student
18 loan borrower, the account of the student loan borrower, and the student education loan of the
19 student loan borrower, including the repayment status of the student loan borrower and any
20 benefits associated with the student education loan of the student loan borrower.

21 (k) When a prior student loan servicer receives a payment intended for the new student
22 loan servicer, the prior student loan servicer must promptly transfer the payment to the new
23 servicer, along with the date the prior servicer received the payment.

24 (l) When a new servicer receives a payment from a prior servicer under subsection (j) of
25 this section, the payment must be applied as of the date received by the prior servicer. A student
26 loan servicer must implement processes and controls to ensure a student loan borrower does not
27 incur additional interest, fees, or delinquency due to complications related to the sale, assignment,
28 or other transfer of the servicing of a student education loan.

29 **19-33-9. Examinations.**

30 (a) In addition to any other authority provided under this chapter, the department shall
31 have the authority to conduct examinations of registrants.

32 (b) In order to carry out the purposes of this chapter, the department may:

33 (1) Retain attorneys, accountants or other professionals and specialists as examiners or
34 auditors to conduct or assist in the conduct of examinations. The costs of such persons shall be

1 borne by the registrant:

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

6 (3) Use, hire, contract or employ public or privately available analytical systems,
7 methods or software to examine the student loan servicer or person subject to the provisions of
8 this chapter. The costs of such systems shall be borne by the registrant;

9 (4) Accept and rely on examination reports made by other government officials, within or
10 outside of the state; and

11 (5) Accept audit reports made by an independent certified public accountant for the
12 student loan servicer or person subject to the provisions of this chapter in the course of that part
13 of the examination covering the same general subject matter as the audit and incorporate the audit
14 report in the report of examination or other writing of the department.

15 (c) The department may at any time examine the student education loans and business
16 and examine the books, accounts, records, and files used therein, of every registrant and person
17 who shall be engaged in any activity that requires a registration under this chapter, whether the
18 person shall act, or claim to act, as principal or agent, or under or without the authority of this
19 chapter. For that purpose, the department shall have free access to the offices and places of
20 business, books, accounts, paper, records, files, and safes, of all such persons. The department,
21 shall have authority to require the attendance of, and to examine under oath, any person whose
22 testimony may be required relative to the student education loans or the business or to the subject
23 matter of any examination, or hearing.

24 (d) The department shall make an examination of the affairs, business, office, and records
25 of each registrant as often as is necessary, based upon all relevant factors, including the volume of
26 activity within the state. The total cost of an examination made pursuant to this section shall be
27 paid by the registrant or person being examined and shall include the following expenses:

28 (1) One hundred fifty percent (150%) of the total salaries and benefits plus one hundred
29 percent (100%) of the travel and transportation expenses for the examining personnel engaged in
30 the examinations. The fees shall be paid to the department to, and for the use of, the state. The
31 examination fees shall be in addition to any taxes and fees otherwise payable to the state;

32 (2) All reasonable technology costs related to the examination process. Technology costs
33 shall include the actual cost of software and hardware utilized in the examination process and the
34 cost of training examination personnel in the proper use of the software or hardware; and

1 (3) All necessary and reasonable education and training costs incurred by the state to
2 maintain the proficiency and competence of the examination personnel. All such costs shall be
3 incurred in accordance with appropriate state of Rhode Island regulations, guidelines, and
4 procedures.

5 (e) The authority of this chapter shall remain in effect, whether such student loan servicer
6 or person subject to the provisions of this chapter acts or claims to act under any licensing or
7 registration law of this state, or claims to act without such authority.

8 (f) No student loan servicer or person subject to examination under this section may
9 knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer
10 records or other information.

11 (g) The provisions of § 19-4-3 shall apply to investigatory records and examination
12 reports issued by other state and federal regulatory agencies, and the work papers of examinations
13 or investigations of registrants created by the department; provided, however, the director or
14 designee, is authorized to make public all consumer complaints and final examination reports
15 issued by the department as determined by the director or designee.

16 **19-33-10. Fines.**

17 (a) The director, after an administrative hearing pursuant to chapter 35 of title 42, may
18 issue fines upon a finding that the registrant violated the provisions of this chapter, or any
19 regulation or order lawfully made pursuant to this chapter; or take any other action provided for
20 in this chapter.

21 (b) Any student loan servicer or the members, officers, directors, agents, and employees
22 of any student loan servicer who violate or participate in the violation of any of the applicable
23 provisions of this chapter, or any regulation promulgated thereunder shall be punished by a fine
24 of not more than two thousand dollars (\$2,000) per violation. Each student education loan
25 constitutes a separate offense.

26 **19-33-11. Appeal and review.**

27 Any student loan servicer aggrieved by an action of the department in imposition of fines
28 shall have the right to appeal the action, order, or decision pursuant to chapter 35 of title 42.

29 **19-33-12. Prohibited conduct.**

30 No student loan servicer shall:

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

33 (2) Engage in any unfair or deceptive practice toward any person or misrepresent or omit
34 any material information in connection with the servicing of a student education loan, including,

1 but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or
2 claimed to be due on a student education loan, the terms and conditions of the loan agreement or
3 the borrower's obligations under the loan;

4 (3) Obtain property by fraud or misrepresentation;

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

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

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

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

16 (8) Negligently make any false statement or knowingly or willfully make any omission of
17 a material fact in connection with any information or reports filed with a governmental agency or
18 in connection with any examination conducted by the department or investigation conducted by
19 the attorney general or other governmental agency; or

20 (9) Fail to properly evaluate a student loan borrower for an income-driven or other
21 student loan repayment program or for eligibility for a public service loan forgiveness program
22 before placing the student loan borrower in forbearance or default, if an income-driven repayment
23 or other program is available to the student loan borrower except as otherwise provided in federal
24 law, federal student loan agreements, or a contract between the federal government and a student
25 loan servicer.

26 **19-33-13. Investigation and enforcement.**

27 The attorney general may enforce a violation of § 19-33-12 as an unlawful act or practice
28 under chapter 13.1 of title 6.

29 **19-33-14. Private actions.**

30 Any student loan borrower may bring an action under § 6-13.1-5.2 for a violation of § 19-
31 33-12 as an unlawful act or practice under chapter 13.1 of title 6.

32 **19-33-15. Student loan consumer protection account established.**

33 A student loan consumer protection restricted receipt account (the "account") is hereby
34 created within the department of the attorney general. Monies deposited in the account shall be

1 expended by the attorney general for the purpose of administering the provisions of this chapter.

2 **19-33-16. Exemption.**

3 (a) For the purposes of this chapter, any federal or state chartered bank or credit union
4 that originates a student education loan, or acts as a servicer and any wholly owned subsidiary of
5 a bank or credit union, shall be exempt from the provisions of §§ 19-33-4, 19-33-6 through 19-
6 33-11, inclusive, §§ 19-33-12(9) and 19-33-14.

7 (b) Student loan servicers that are not banks or credit unions operating under federal or
8 state charters, nor wholly owned subsidiaries thereof that service student loans on behalf of state
9 or federal chartered banks and credit unions, shall not be exempt from any section of this chapter.

10 SECTION 2. This act shall take effect upon passage.

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LC002289/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO FINANCIAL INSTITUTIONS -- STUDENT LOAN BILL OF RIGHTS ACT

1 This act would create the "student loan bill of rights act", which would establish
2 guidelines for the attorney general's consumer protection unit, in collaboration with the director
3 of business regulation, the general treasurer, and the commissioner of postsecondary education to
4 receive and review complaints of student loan borrowers. In addition, the duties and
5 responsibilities of student loan servicers are set forth in the act.

6 This act would take effect upon passage.

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