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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

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

Introduced By: Representatives McNamara, Alzate, Amore, Cortvriend, and Newberry

Date Introduced: March 29, 2019

Referred To: House Judiciary

(Attorney General/General Treasurer)

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.

16 (6) "Student loan borrower" means:

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

19 (ii) Any person who shares responsibility, as a guarantor or by other legal obligation,

1 with such resident for repaying the postsecondary student education loan for another.

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

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

5 (i)(A) Receiving any scheduled periodic payments from a borrower or notification of
6 such payments; and

7 (B) Applying payments to the borrower's account pursuant to the terms of the
8 postsecondary education loan or of the contract governing the servicing;

9 (ii) During a period when no payment is required on a postsecondary education loan,
10 maintaining account records for the loan; and

11 (iii) Communicating with the borrower regarding the loan, on behalf of the loan's holder;
12 or

13 (iv) Interactions with a borrower, including activities to help prevent default on
14 obligations arising from postsecondary education loans, conducted to facilitate the activities
15 described in this section.

16 **19-33-3. Borrower assistance, education, and complaints.**

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

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

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

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

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

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

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

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

34 **19-33-4. Registration of student loan servicers.**

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

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

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

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

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

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

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

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

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

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

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

30 (d) No registration shall be transferable or assignable. A change in ownership of less than
31 twenty-five percent (25%) of the voting stock or equity interests of a registrant shall not be
32 considered a transfer or assignment of the registration. A change in ownership of twenty-five
33 percent (25%) or more of the voting stock or equity interests shall require notification to the
34 department, and registration by the transferee/assignee within fifteen (15) days of the change in

1 ownership. A change in name shall require notification to the department within fifteen (15) days.

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

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

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

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

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

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

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

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

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

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

27 **19-33-6. Maintenance of records.**

28 (a) Each student loan servicer shall maintain complete records of each student education
29 loan transaction, including recordings of communications with borrowers, for not less than two
30 (2) years following the final payment on such student education loan or the assignment of such
31 student education loan, whichever occurs first, or any longer period as may be required by any
32 other provision of the general or public laws.

33 (b) If requested by the division of banking, each student loan servicer shall make all
34 records available, not later than five (5) business days after requested. Upon request, the

1 department may grant a student loan servicer additional time to make such records available.

2 **19-33-7. Reporting requirements.**

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

11 **19-33-8. Responsibilities of student loan servicers.**

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

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

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

24 (d) If a student loan servicer offers private student loan prepayment arrangements, a
25 student loan servicer shall consistently present and offer those arrangements to borrowers with
26 similar financial circumstances.

27 (e) A student loan servicer shall respond to a written inquiry from a student loan
28 borrower, or the representative of a student loan borrower, within ten (10) business days after
29 receipt of the request, and provide information relating to the request and, if applicable, the action
30 the student loan servicer will take to correct the account or an explanation for the student loan
31 servicer's position that the borrower's account is correct.

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

1 for the delay in responding.

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

5 (f) Except as provided by federal law or required by a student loan agreement, a student
6 loan servicer shall inquire of a borrower how to apply an overpayment to a student education
7 loan. A borrower's direction on how to apply an overpayment to a student education loan shall
8 stay in effect for any future overpayments during the term of a student education loan until the
9 borrower provides different directions. For purposes of this section, "overpayment" means a
10 payment on a student education loan in excess of the monthly amount due from a borrower on a
11 student education loan, also commonly referred to as a prepayment.

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

19 (h) In the event of the sale, assignment, or other transfer of the servicing of a student
20 education loan that results in a change in the identity of the person to whom a student loan
21 borrower is required to send payments or direct any communication concerning the student
22 education loan, the following provisions apply:

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

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

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

34 (4) The student loan servicer shall complete the transfer of records required under

1 subsection (h)(2) of this section within forty-five (45) days after the sale, assignment, or other
2 transfer of the servicing of a student education loan.

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

9 (i) A student loan servicer that services a student education loan shall adopt policies and
10 procedures to verify that the student loan servicer has received all records regarding the student
11 loan borrower, the account of the student loan borrower, and the student education loan of the
12 student loan borrower, including the repayment status of the student loan borrower and any
13 benefits associated with the student education loan of the student loan borrower.

14 (j) When a prior student loan servicer receives a payment intended for the new student
15 loan servicer, the prior student loan servicer must promptly transfer the payment to the new
16 servicer, along with the date the prior servicer received the payment.

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

22 **19-33-9. Examinations.**

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

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

26 (1) Retain attorneys, accountants or other professionals and specialists as examiners or
27 auditors to conduct or assist in the conduct of examinations. The costs of such persons shall be
28 borne by the registrant;

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

33 (3) Use, hire, contract or employ public or privately available analytical systems,
34 methods or software to examine the student loan servicer or person subject to the provisions of

1 this chapter. The costs of such systems shall be borne by the registrant;

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

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

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

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

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

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

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

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

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

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

9 **19-33-10. Fines.**

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

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

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

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

22 **19-33-12. Prohibited conduct.**

23 No student loan servicer shall:

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

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

31 (3) Obtain property by fraud or misrepresentation;

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

34 (5) Knowingly or recklessly provide inaccurate information to a credit bureau, thereby

1 harming a student loan borrower's creditworthiness:

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

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

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

13 (9) Fail to properly evaluate a student loan borrower for an income-driven or other
14 student loan repayment program or for eligibility for a public service loan forgiveness program
15 before placing the student loan borrower in forbearance or default, if an income-driven repayment
16 or other program is available to the student loan borrower except as otherwise provided in federal
17 law, federal student loan agreements, or a contract between the federal government and a student
18 loan servicer.

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

20 The attorney general may enforce a violation of § 19-33-9 as an unlawful act or practice
21 under chapter 13.1 of title 6.

22 **19-33-14. Private actions.**

23 Any student loan borrower may bring an action under § 6-13.1-5.2 for a violation of § 19-
24 33-9 as an unlawful act or practice under chapter 13.1 of title 6.

25 **19-33-15. Student loan consumer protection account established.**

26 A student loan consumer protection restricted receipt account (the "account") is hereby
27 created within the department of the attorney general. Monies deposited in the account shall be
28 expended by the attorney general for the purpose of administering the provisions of this chapter.

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

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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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