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## **An Act To Establish a Student Loan Bill of Rights To License and Regulate Student Loan Servicers**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 9-A MRSA Art. 14** is enacted to read:

### **ARTICLE 14**

### **STUDENT LOAN BILL OF RIGHTS**

#### **§ 14-101. Short title**

This Article may be known and cited as "the Student Loan Bill of Rights."

#### **§ 14-102. Applicability**

This Article applies to a person who acts as a student loan servicer in this State.

#### **§ 14-103. Definitions**

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings.

**1. Servicing.** "Servicing" means:

A. Receiving scheduled periodic payments from a student loan borrower pursuant to the terms of a student education loan;

B. Applying the payments of principal and interest and such other payments with respect to the amounts received from a student loan borrower as may be required pursuant to the terms of a student education loan; and

C. Performing other administrative services with respect to a student education loan.

**2. Student education loan.** "Student education loan" means a loan primarily for personal use to finance postsecondary education or other school-related expenses.

**3. Student loan borrower.** "Student loan borrower" means:

A. A resident of this State who has received or agreed to pay a student education loan; or

B. A person who shares legal responsibility with a resident under paragraph A for repaying the student education loan.

**4. Student loan servicer.** "Student loan servicer" means a person, wherever located, responsible for the servicing of a student education loan to a student loan borrower.

**5. Superintendent.** "Superintendent" means the Superintendent of Consumer Credit Protection.

#### **§ 14-104. Student loan ombudsman**

The superintendent shall, using licensing and investigation fees collected pursuant to section 14-107, support, maintain and designate a student loan ombudsman within the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection to provide timely assistance to student loan borrowers.

The student loan ombudsman, in consultation with the superintendent, shall:

**1. Complaints.** Receive, review and attempt to resolve complaints from student loan borrowers, including, but not limited to, in collaboration with institutions of higher education, student loan servicers and any other participants in student loan lending, including, but not limited to, originators servicing their own student education loans;

**2. Data.** Compile and analyze data on student loan borrower complaints as described in subsection 1;

**3. Assistance.** Assist student loan borrowers to understand their rights and responsibilities under the terms of student education loans;

**4. Information.** Provide information to the public, agencies, Legislators and others regarding the problems and concerns of student loan borrowers and make recommendations for resolving those problems and concerns;

**5. Laws, regulations and policies.** Analyze and monitor the development and implementation of federal, state and local laws, ordinances, regulations, rules and policies relating to student loan borrowers and recommend any necessary changes;

**6. Student loan history.** Review the complete student education loan history for a student loan borrower who provides written consent for such a review;

**7. Availability.** Disseminate information concerning the availability of the student loan ombudsman to assist student loan borrowers and potential student loan borrowers, public institutions of higher education, student loan servicers and any other participants in student education loan lending with any student education loan servicing concerns;

**8. Education course.** Establish and maintain a student loan borrower education course within existing resources that includes educational presentations and materials regarding student education loans. The course must include, but is not limited to, key loan terms, documentation requirements, monthly payment obligations, income-based repayment options, loan forgiveness and disclosure requirements; and

**9. Other actions.** Take any other actions necessary to fulfill the duties of the student loan ombudsman as set forth in this Article.

### **§ 14-105. Annual report**

The superintendent shall submit a report by January 1st of each year to the joint standing committees of the Legislature having jurisdiction over education and cultural affairs and insurance and financial services matters. The report must include:

**1. Implementation.** A description of actions taken with respect to the implementation of this Article;

**2. Effectiveness.** An assessment of the overall effectiveness of the student loan ombudsman; and

**3. Additional steps.** Recommendations regarding additional steps for the Department of Professional and Financial Regulation to gain regulatory control over licensing and enforcement with respect to student loan servicers.

### **§ 14-106. Student loan ombudsman and student loan servicer licensing account**

There is established the student loan ombudsman and student loan servicer licensing account, which is a separate, nonlapsing account within the Bureau of Consumer Credit Protection. Licensing and investigation fees collected pursuant to section 14-107 and any other money required by law to be deposited in the account must be deposited in the account. The superintendent shall expend funds held in the account for the purpose of administering the provisions of this Article.

### **§ 14-107. Licensing of student loan servicers**

A person may not act as a student loan servicer, directly or indirectly, without first obtaining a license from the superintendent pursuant to this section, unless that person is exempt from licensure pursuant to subsection 1.

**1. Exempt.** The following persons are exempt from student loan servicer licensing requirements:

**A.** A licensed bank or credit union, a wholly owned subsidiary of such a bank or credit union and an operating subsidiary of such a bank or credit union as long as each owner of the operating subsidiary is wholly owned by that bank or credit union.

**2. Application.** A person seeking to act within this State as a student loan servicer shall make a written application to the superintendent for an initial license in such form as the superintendent prescribes. The application must be accompanied by:

A. A financial statement prepared by a certified public accountant or a public accountant, a general partner if the applicant is a partnership, a corporate officer if the applicant is a corporation, or a member duly authorized to execute such documents if the applicant is a limited liability company or association;

B. Information regarding the history of criminal convictions of the following:

(1) The applicant;

(2) Partners, if the applicant is a partnership;

(3) Members, if the applicant is a limited liability company or association; and

(4) Officers, directors and principal employees, if the applicant is a corporation.

The information submitted pursuant to this paragraph must be sufficient, as determined by the superintendent, to make the findings under subsection 3;

C. A nonrefundable license fee of \$1,000; and

D. A nonrefundable investigation fee of \$800.

**3. Investigation of applicant.** Upon the filing of an application for an initial license and the payment of the fees for licensing and investigation pursuant to subsection 2, the superintendent shall investigate the financial condition and responsibility, financial and business experience, character and general fitness of the applicant. The superintendent, in accordance with Title 25, section 1706, may conduct a state and national criminal history record check of the applicant and of each partner, member, officer, director and principal employee of the applicant. The superintendent may issue a license if the superintendent finds that:

A. The applicant's financial condition is sound;

B. The applicant's business will be conducted honestly, fairly, equitably, carefully and efficiently within the purposes and intent of this Article and in a manner commanding the confidence and trust of the community;

C. If the applicant is:

(1) An individual, the individual is in all respects properly qualified and of good character;

(2) A partnership, each partner is in all respects properly qualified and of good character;

(3) A corporation, the president, chair of the executive committee, senior officer responsible for the corporation's business and chief financial officer or any other person who performs similar functions as determined by the superintendent, each director, each trustee and each shareholder owning 10% or more of each class of the securities of the corporation or association is in all respects properly qualified and of good character; or

(4) A limited liability company or association, each member is in all respects properly qualified and of good character;

D. No person on behalf of the applicant knowingly has made an incorrect statement of a material fact in the application or in any report or statement made pursuant to this Article; and

E. The applicant has met any other requirements as determined by the superintendent.

**4. License expiration.** A license issued pursuant to this Article expires at the close of business on September 30th of the odd-numbered year following its issuance, unless renewed or earlier surrendered, suspended or revoked pursuant to this Article. No later than 15 days after a licensee ceases to engage in the business of student education loan servicing in this State for any reason, including a business decision to terminate operations in this State, license revocation, bankruptcy or voluntary dissolution, the licensee shall provide written notice of surrender to the superintendent and shall surrender to the superintendent its license for each location in which the licensee has ceased to engage in such business. The written notice of surrender must identify the location where the records of the licensee will be stored and the name, address and telephone number of an individual authorized to provide access to the records. The surrender of a license does not reduce or eliminate the licensee's civil or criminal liability arising from acts or omissions occurring prior to the surrender of the license, including any administrative actions undertaken by the superintendent to revoke or suspend a license, assess a civil penalty, order restitution or exercise any other authority provided to the superintendent.

**5. License renewal.** A license issued pursuant to this Article may be renewed for the ensuing 24-month period upon the filing of an application containing all required documents and fees as provided in this section. A renewal application must be filed on or before September 1st of the year in which the license expires. A renewal application filed with the superintendent after September 1st that is accompanied by a \$100 late fee is deemed to be timely and sufficient. If an application for a renewal license has been filed with the superintendent on or before the date the license expires, the license sought to be renewed continues in effect until the issuance by the superintendent of the renewal license applied for or until the superintendent has notified the licensee in writing of the superintendent's refusal to issue the renewal license together with the grounds upon which the refusal is based. The superintendent may refuse to issue a renewal license on any ground on which the superintendent might refuse to issue an initial license.

**6. Dishonored check.** If a check filed with the superintendent to pay a license, investigation or renewal fee under this section is dishonored, the superintendent shall automatically suspend the license or the renewal license that has been issued but is not yet effective. The superintendent shall give the licensee notice of the automatic suspension pending proceedings for revocation or refusal to renew and an opportunity for a hearing on such actions in accordance with Article 6.

**7. Update application information.** An applicant or licensee under this Article shall notify the superintendent, in writing, of any change in the information provided in its initial application for a license or its most recent renewal application for a license, as applicable, not later than 10 business days after the occurrence of the event that results in the change.

**8. Incomplete application.** The superintendent may consider an application for a license under this Article abandoned if the applicant fails to respond to any request for information required under this Article or any rules adopted pursuant to this Article, as long as the superintendent notifies the applicant, in writing, that the application will be considered abandoned if the applicant fails to submit the information within 60 days after the date on which the request for information was made. An application filing fee paid prior to the date an application is abandoned pursuant to this subsection may not be refunded. Abandonment of an application pursuant to this subsection does not preclude the applicant from submitting a new application for a license under this Article.

**9. Change of license notification.** A licensee under this Article may not act within this State as a student loan servicer under any name or at any place of business other than those named in the license. Any change of location of a place of business of a licensee requires prior written notice to the superintendent. Not more than one place of business may be maintained under the same license, but the superintendent may issue more than one license to a licensee that complies with the provisions of this Article as to each license. A license is not transferable or assignable.

**10. Records retention; records request.** A student loan servicer shall maintain adequate records of each student education loan transaction for not less than 2 years following the final payment on the student education loan or the assignment of the student education loan, whichever occurs first, or such longer period as may be required by any other provision of law.

Upon request by the superintendent, a student loan servicer shall make such records available or shall send such records to the superintendent by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt, not later than 5 business days after requested by the superintendent to do so. The superintendent may grant a licensee additional time to make such records available or to send the records to the superintendent.

**11. License suspension and revocation; refusal to renew.** The superintendent may suspend, revoke or refuse to renew a license issued pursuant to this section or take any other action in accordance with Article 6 if the superintendent finds one of the following:

A. The licensee has violated any provision of this Article or any rule or order lawfully adopted or made pursuant to and within the authority of this Article; or

B. Any fact or condition exists that, if it had existed at the time of the original application for the license, clearly would have warranted a denial of the license.

An abatement of the license fee may not be made if the license is surrendered, revoked or suspended.

## **§ 14-108. Student loan servicers**

**1. Prohibited acts.** A student loan servicer may not:

A. Directly or indirectly employ a scheme, device or artifice to defraud or mislead student loan borrowers;

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

C. Obtain property by fraud or misrepresentation;

D. Knowingly misapply or recklessly apply student education loan payments to the outstanding balance of a student education loan;

E. Knowingly or recklessly provide inaccurate information to a credit bureau, thereby harming the determination of a student loan borrower's creditworthiness;

F. Fail to report both the favorable and unfavorable payment history of a student loan borrower to a nationally recognized consumer credit bureau at least annually if the student loan servicer regularly reports information to such a credit bureau;

G. Refuse to communicate with an authorized representative of a student loan borrower who provides a written authorization signed by the student loan borrower, except that the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower;

H. Negligently make any false statement or knowingly and willfully omit a material fact in connection with information or reports filed with a governmental agency or in connection with an investigation conducted by the superintendent or another governmental agency; or

I. Fail to evaluate a student loan borrower for an income-based repayment program prior to placing the borrower in forbearance or default, if an income-based repayment program is available to the borrower.

## **§ 14-109. Superintendent powers and duties**

**1. Investigations and examinations.** The superintendent has the authority to conduct investigations and examinations as follows.

A. For purposes of initial licensing, license renewal, license suspension, license revocation or termination or general or specific inquiry or investigation to determine compliance with this Article, the superintendent may access, receive and use any books, accounts, records, files, documents, information or evidence belonging to a licensee or person under examination, including, but not limited to, criminal, civil and administrative history information; personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in Section 603(p) of the federal Fair Credit Reporting Act, 15 United States Code, Section 1681a; and any other documents, information or evidence the superintendent considers relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information or evidence.

B. For the purposes of investigating violations or complaints arising under this Article or for the purposes of examination, the superintendent may review, investigate or examine any licensee or person subject to this Article as often as necessary in order to carry out the purposes of this Article. The superintendent may direct, subpoena or order the attendance of and examine under oath any person whose testimony may be required about the student education loan or the business or subject matter of any such examination or investigation and may direct, subpoena or order the person to produce books, accounts, records, files and any other documents the superintendent considers relevant to the inquiry.

C. In making an examination or investigation authorized by this section, the superintendent may control access to any documents and records of the licensee or person under examination or investigation. The superintendent may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, a person may not remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the superintendent. Unless the superintendent has reasonable grounds to believe the documents or records of the licensee or person have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of this Article, the licensee or owner of the documents and records may have access to the documents or records as necessary to conduct its ordinary business affairs.

D. In order to carry out the purposes of this section, the superintendent may:

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

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

(3) Use, hire, contract for or employ public or privately available analytical systems, methods or software to examine or investigate the licensee or person subject to this Article;

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

(5) Accept audit reports made by an independent certified public accountant for the licensee or person subject to this Article in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in a report of examination, report of investigation or other writing of the superintendent.

E. A licensee or person subject to investigation or examination under this section may not knowingly withhold, abstract, remove, mutilate or destroy any books, physical records, computer records or other information relating to information regulated under this Article.

F. Whenever it appears to the superintendent that a person has violated, is violating or is about to violate a provision of this Article or a rule adopted pursuant to this Article or that a licensee or an owner, director, officer, member, partner, shareholder, trustee, employee or agent of the licensee has committed fraud, engaged in dishonest activities or made a misrepresentation, the superintendent may take action against the person or licensee in accordance with Article 6.

### **§ 14-110. Compliance with federal law**

A student loan servicer shall comply with all applicable federal laws and regulations relating to student loan servicing, including, but not limited to, the federal Truth in Lending Act, 15 United States Code, Sections 1601 to 1667f (2010), as amended, and the regulations adopted pursuant to that Act. In addition to any other remedies provided by law, a violation of that Act or regulations adopted pursuant to that Act is a violation of this section and a basis upon which the superintendent may take enforcement action pursuant to this Article.

### **§ 14-111. Rulemaking**

The Commissioner of Professional and Financial Regulation shall adopt rules to implement this Article. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 2. Effective date.** This Act takes effect January 1, 2018.

## **SUMMARY**

This bill does the following.

1. It creates a position of student loan ombudsman under the Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection. The student loan ombudsman's duties include: receiving, reviewing and, if possible, resolving

complaints from student loan borrowers; compiling and analyzing student loan borrower data; assisting student loan borrowers to understand their rights and responsibilities; providing information to the public, agencies and Legislators regarding concerns of student loan borrowers and making recommendations to resolve them; analyzing and monitoring the development and implementation of other legislation and policies that affect student loan borrowers and recommending necessary changes; reviewing student loan history for borrowers who consent; disseminating information about the ombudsman's availability to assist others; establishing and maintaining a student loan borrower education course; and other necessary actions.

2. It requires the superintendent to submit an annual report by January 1st of each year in regard to the effectiveness of the student loan ombudsman and to recommend additional steps necessary to gain regulatory control over licensing and enforcement with respect to student loan servicers.

3. It establishes a licensing procedure for student loan servicers, which includes an investigation of an applicant, along with a license fee and an investigation fee.

4. It identifies prohibited acts for student loan servicers, including employing any scheme, device or artifice to defraud or mislead student loan borrowers.

5. It identifies duties of the superintendent in regard to investigations and examinations of student loan servicers.

6. It requires student loan servicers to comply with all applicable federal laws and regulations related to student loan servicing.

7. It requires the Commissioner of Professional and Financial Regulation to adopt routine technical rules necessary to carry out the provisions in this bill.