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Legislative Document

No. 995

S.P. 285

In Senate, February 26, 2019

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

Reference to the Committee on Innovation, Development, Economic Advancement and Business suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator VITELLI of Sagadahoc.
Cosponsored by Representative STEWART of Presque Isle and
Senators: FOLEY of York, LIBBY of Androscoggin, POULIOT of Kennebec, SANBORN, H.
of Cumberland, Representatives: BRENNAN of Portland, TEPLER of Topsham.

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

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

3 **ARTICLE 14**

4 **STUDENT LOAN BILL OF RIGHTS**

5 **§14-101. Short title**

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

7 **§14-102. Applicability**

8 This Article applies to a person who acts as a student loan servicer in this State,
9 except that this Article does not apply to a supervised financial organization or a financial
10 institution holding company as defined in Title 9-B, section 1011, subsection 1, to a
11 mutual holding company as defined in Title 9-B, section 1052, subsection 2 or to a
12 wholly owned subsidiary of a supervised financial organization, financial institution
13 holding company or mutual holding company.

14 **§14-103. Definitions**

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

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

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

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

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

24 **2. Student education loan.** "Student education loan" means a loan that is extended
25 to a student loan borrower expressly for postsecondary education expenses or other
26 school-related expenses and does not include open-ended credit or any loan that is
27 secured by real property.

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

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

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

1 **4. Student loan servicer.** "Student loan servicer" means a person, wherever located,
2 responsible for the servicing of a student education loan to a student loan borrower.
3 "Student loan servicer" does not include a supervised financial organization or a financial
4 institution holding company as defined in Title 9-B, section 1011, subsection 1, a mutual
5 holding company as defined in Title 9-B, section 1052, subsection 2 or a wholly owned
6 subsidiary of a supervised financial organization, financial institution holding company or
7 mutual holding company.

8 **5. Superintendent.** "Superintendent" means the Superintendent of Consumer Credit
9 Protection within the Department of Professional and Financial Regulation.

10 **§14-104. Student loan ombudsman**

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

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

16 **1. Complaints.** Receive, review and attempt to resolve complaints from:

17 A. Student loan borrowers; and

18 B. In collaboration with institutions of higher education, student loan servicers and
19 any other participants in student education loan lending, including, but not limited to,
20 originators servicing their own student education loans;

21 **2. Data.** Compile and analyze data on student loan borrower complaints as
22 described in subsection 1 and as resolved pursuant to section 14-106;

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

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

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

31 **6. Student loan history.** Review, as authorized and appropriate, the complete
32 student education loan history for a student loan borrower who provides written consent
33 for such a review;

34 **7. Outreach.** Provide sufficient outreach and disseminate information concerning
35 the availability of the student loan ombudsman to assist student loan borrowers and
36 potential student loan borrowers, public institutions of higher education, student loan
37 servicers and any other participants in student education loan lending with any student
38 education loan servicing concerns;

1 **8. Assistance with complaints.** Seek the assistance of an exempt organization in the
2 resolution of a student loan borrower complaint as described in subsection 1 involving
3 that exempt organization. The exempt organization shall cooperate with the student loan
4 ombudsman as required by section 14-106. For purposes of this subsection, "exempt
5 organization" means the Finance Authority of Maine and financial institutions exempt
6 from this Article pursuant to section 14-107, subsection 1; and

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

9 **§14-105. Annual report**

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

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

15 **2. Effectiveness.** An assessment of the overall effectiveness of the student loan
16 ombudsman, including information, in the aggregate, regarding student loan borrower
17 complaints investigated with the assistance of an organization that is exempt from this
18 Article pursuant to section 14-107, subsection 1; and

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

22 **§14-106. Assistance by exempt organization; report**

23 An exempt organization that is requested by the student loan ombudsman to provide
24 assistance pursuant to section 14-104, subsection 8 shall provide, in a timely manner, the
25 information requested by the ombudsman necessary to investigate and resolve a student
26 loan borrower complaint, including the steps taken by the exempt organization to resolve
27 the complaint, or, on its own, shall resolve, in a timely manner, the complaint and provide
28 the ombudsman with documentation regarding the resolution. Annually, an exempt
29 organization that is involved in the resolution of a complaint pursuant to this section shall
30 report to the ombudsman the number of complaints received and the number of
31 complaints resolved by the exempt organization. For purposes of this section, "exempt
32 organization" means the Finance Authority of Maine and financial institutions exempt
33 from this Article pursuant to section 14-107, subsection 1.

34 **§14-107. Licensing of student loan servicers**

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

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

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

4 B. A supervised financial organization or a Maine financial institution holding
5 company as defined in Title 9-B, section 1011, subsection 2; a Maine financial
6 institution as defined in Title 9-B, section 1011, subsection 6; a mutual holding
7 company as defined in Title 9-B, section 1052, subsection 2 whose home state, as
8 defined in Title 9-B, section 131, subsection 20-A, is Maine; or a wholly owned
9 subsidiary of a supervised financial organization, Maine financial institution holding
10 company, Maine financial institution or mutual holding company; and

11 C. The Finance Authority of Maine.

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

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

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

- 20 (1) The applicant;
- 21 (2) Partners, if the applicant is a partnership;
- 22 (3) Members, if the applicant is a limited liability company or association; and
- 23 (4) Officers, directors and principal employees, if the applicant is a corporation.

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

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

27 D. A nonrefundable investigation fee of \$800.

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

36 A. The applicant's financial condition is sound;

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

1 C. If the applicant is:

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

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

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

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

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

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

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

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

1 the refusal is based. The superintendent may refuse to issue a renewal license on any
2 ground on which the superintendent might refuse to issue an initial license.

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

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

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

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

30 **10. Records retention; records request.** A student loan servicer shall maintain
31 adequate records of each student education loan transaction for not less than 2 years
32 following the final payment on the student education loan or the assignment of the
33 student education loan, whichever occurs first, or except as otherwise required by federal
34 law, a federal student loan education agreement or a contract between the Federal
35 Government and a licensee under this Article.

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

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

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

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

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

10 **§14-108. Student loan servicers**

11 **1. Definition.** As used in this section, "nonconforming payment" means a payment
12 on a student education loan of a student loan borrower that is different than the required
13 payment.

14 **2. Requirements.** Except as otherwise provided in federal law, a federal student
15 education loan agreement or a contract between the Federal Government and a student
16 loan servicer, a student loan servicer shall comply with the requirements of this
17 subsection.

18 A. A student loan servicer shall respond to a written inquiry from a student loan
19 borrower or the representative of a student loan borrower within 30 days after
20 receiving the inquiry.

21 B. Upon receipt of a nonconforming payment on a student education loan of a
22 student loan borrower, a student loan servicer shall:

23 (1) Ask the student loan borrower how the borrower prefers the student loan
24 servicer to apply a nonconforming payment;

25 (2) Note how the student loan borrower prefers the student loan servicer to apply
26 a nonconforming payment;

27 (3) Apply the nonconforming payment in the manner preferred by the student
28 loan borrower; and

29 (4) Until the student loan borrower indicates otherwise, apply any future
30 nonconforming payments in the same manner preferred by the borrower as noted
31 pursuant to subparagraph (2).

32 C. In the event of the sale, assignment or other transfer of the servicing of a student
33 education loan that results in a change in the identity of the person to whom a student
34 loan borrower is required to send payments or direct any communication concerning
35 the student education loan:

36 (1) As a condition of the sale, assignment or transfer, the student loan servicer
37 shall require the new student loan servicer to honor all benefits originally
38 represented as available to the student loan borrower during the repayment of the
39 student education loan and preserve the availability of such benefits, including
40 any benefits for which the student loan borrower has not yet qualified;

1 (2) Within 45 days after the sale, assignment or transfer, the student loan servicer
2 shall transfer to the new student loan servicer all information regarding the
3 student loan borrower, the account of the student loan borrower and the student
4 education loan of the student loan borrower, including the repayment status of the
5 student loan borrower and any benefits associated with the student education loan
6 of the student loan borrower; and

7 (3) The sale, assignment or transfer of the servicing of the student education loan
8 must be completed at least 7 days before the next payment on the loan is due.

9 D. A student loan servicer that obtains the right to service a student education loan
10 shall adopt policies and procedures to verify that the student loan servicer has
11 received all information regarding the student loan borrower, the account of the
12 student loan borrower and the student education loan of the student loan borrower,
13 including, but not limited to, the repayment status of the student loan borrower and
14 any benefits associated with the student education loan of the student loan borrower.

15 **3. Prohibited acts. A student loan servicer may not:**

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

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

23 C. Obtain property by fraud or misrepresentation;

24 D. Misapply student education loan payments to the outstanding balance of a student
25 education loan;

26 E. Provide inaccurate information to a credit bureau, thereby harming the
27 determination of a student loan borrower's creditworthiness;

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

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

36 H. Make any false statement or omit a material fact in connection with information
37 or reports filed with a governmental agency or in connection with an investigation
38 conducted by the superintendent or another governmental agency; or

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

1 **4. Penalties.** A violation of this section is an unfair trade practice under the Maine
2 Unfair Trade Practices Act and is subject to the enforcement and penalty provisions
3 contained in that Act.

4 A. A student loan servicer that fails to comply with any requirement imposed under
5 this section with respect to a student loan borrower is liable in an amount equal to the
6 sum of:

7 (1) Any actual damages sustained by the borrower as result of the failure;

8 (2) A monetary award equal to 3 times the total amount the student loan servicer
9 collected from the borrower;

10 (3) Punitive damages as the court may allow; and

11 (4) In the case of any successful action by the borrower to enforce the liability
12 set out in this subsection, the costs of the action, together with reasonable
13 attorney's fees as determined by the court.

14 B. The remedies provided in this subsection are not intended to be the exclusive
15 remedies available to a student loan borrower, nor must the borrower exhaust any
16 administrative remedies provided under this subsection or any other applicable law
17 before proceeding under this subsection.

18 **§14-109. Superintendent powers and duties**

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

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

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

41 C. In making an examination or investigation authorized by this section, the
42 superintendent may control access to any documents and records of the licensee or

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

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

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

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

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

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

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

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

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

39 G. The costs of an investigation conducted by the superintendent must be paid by the
40 licensee or person being investigated.

41 H. The superintendent shall adopt rules to implement this Article. Rules adopted
42 pursuant to this paragraph are routine technical rules as defined in Title 5, chapter
43 375, subchapter 2-A.

1 holding companies whose home state is Maine and the Finance Authority of Maine.
2 Those exempt organizations are required to work with the student loan ombudsman to
3 resolve student loan borrower complaints and provide information as requested by the
4 ombudsman.

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

7 8. It requires the superintendent to adopt routine technical rules necessary to carry
8 out the provisions in this bill.