

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1507

S.P. 532

In Senate, April 25, 2017

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

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator VITELLI of Sagadahoc.
Cosponsored by Representative HIGGINS of Dover-Foxcroft and
Senators: CHIPMAN of Cumberland, SAVIELLO of Franklin, Representatives: BEEBE-
CENTER of Rockland, DEVIN of Newcastle, MADIGAN of Waterville.

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 **§14-103. Definitions**

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

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

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

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

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

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

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

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

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

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

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

1 **§14-104. Student loan ombudsman**

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

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

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

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

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

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

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

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

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

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

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

34 **§14-105. Annual report**

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

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

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

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

8 **§14-106. Student loan ombudsman and student loan servicer licensing account**

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

15 **§14-107. Licensing of student loan servicers**

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

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

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

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

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

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

32 (1) The applicant;

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

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

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

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

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

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

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

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

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

15 C. If the applicant is:

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

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

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

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

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

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

33 **4. License expiration.** A license issued pursuant to this Article expires at the close
34 of business on September 30th of the odd-numbered year following its issuance, unless
35 renewed or earlier surrendered, suspended or revoked pursuant to this Article. No later
36 than 15 days after a licensee ceases to engage in the business of student education loan
37 servicing in this State for any reason, including a business decision to terminate
38 operations in this State, license revocation, bankruptcy or voluntary dissolution, the
39 licensee shall provide written notice of surrender to the superintendent and shall surrender
40 to the superintendent its license for each location in which the licensee has ceased to
41 engage in such business. The written notice of surrender must identify the location where

1 the records of the licensee will be stored and the name, address and telephone number of
2 an individual authorized to provide access to the records. The surrender of a license does
3 not reduce or eliminate the licensee's civil or criminal liability arising from acts or
4 omissions occurring prior to the surrender of the license, including any administrative
5 actions undertaken by the superintendent to revoke or suspend a license, assess a civil
6 penalty, order restitution or exercise any other authority provided to the superintendent.

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

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

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

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

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

1 one license to a licensee that complies with the provisions of this Article as to each
2 license. A license is not transferable or assignable.

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

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

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

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

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

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

23 **§14-108. Student loan servicers**

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

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

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

32 C. Obtain property by fraud or misrepresentation;

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

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

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

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

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

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

13 **§14-109. Superintendent powers and duties**

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

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

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

36 C. In making an examination or investigation authorized by this section, the
37 superintendent may control access to any documents and records of the licensee or
38 person under examination or investigation. The superintendent may take possession
39 of the documents and records or place a person in exclusive charge of the documents
40 and records in the place where they are usually kept. During the period of control, a
41 person may not remove or attempt to remove any of the documents and records
42 except pursuant to a court order or with the consent of the superintendent. Unless the
43 superintendent has reasonable grounds to believe the documents or records of the
44 licensee or person have been, or are at risk of being, altered or destroyed for purposes

1 of concealing a violation of this Article, the licensee or owner of the documents and
2 records may have access to the documents or records as necessary to conduct its
3 ordinary business affairs.

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

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

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

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

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

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

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

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

32 **§14-110. Compliance with federal law**

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

1 **§14-111. Rulemaking**

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

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

6 **SUMMARY**

7 This bill does the following.

8 1. It creates a position of student loan ombudsman under the Superintendent of
9 Consumer Credit Protection within the Department of Professional and Financial
10 Regulation, Bureau of Consumer Credit Protection. The student loan ombudsman's duties
11 include: receiving, reviewing and, if possible, resolving complaints from student loan
12 borrowers; compiling and analyzing student loan borrower data; assisting student loan
13 borrowers to understand their rights and responsibilities; providing information to the
14 public, agencies and Legislators regarding concerns of student loan borrowers and
15 making recommendations to resolve them; analyzing and monitoring the development
16 and implementation of other legislation and policies that affect student loan borrowers
17 and recommending necessary changes; reviewing student loan history for borrowers who
18 consent; disseminating information about the ombudsman's availability to assist others;
19 establishing and maintaining a student loan borrower education course; and other
20 necessary actions.

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

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

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

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

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

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