

SENATE HIGHER EDUCATION COMMITTEE

STATEMENT TO

SENATE, No. 2358

STATE OF NEW JERSEY

DATED: JUNE 23, 2020

The Senate Higher Education Committee reports favorably Senate Bill No. 2358.

This bill requires registration of private education lenders and establishes protections for private education borrowers.

Under the bill, a private education lender means any person engaged in the business of securing, making, or extending private education loans, or any holder of a private education loan. “Private education lender” does not include certain financial institutions, to the extent that State regulation is preempted by federal law.

The bill provides that a “private education loan” is an extension of credit that:

(1) is not made, insured, or guaranteed under Title IV of the “Higher Education Act of 1965,” 20 U.S.C. s.1070 et seq.;

(2) is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends;

(3) does not include open-end credit or any loan that is secured by real property or a dwelling; and

(4) does not include an extension of credit in which the covered educational institution is the creditor, in certain circumstances.

The bill prohibits a person from extending student financing or a private education loan to a resident of this State without first registering with the Commissioner of Banking and Insurance as a student financing company.

The bill requires student financing companies to register with the commissioner pursuant to any registration procedures set forth by the commissioner by regulation. Student financing companies are also required to provide the commissioner, at the time of registration and not less than once per year thereafter, with information on the schools at which the company has provided borrowers funding to attend; the volume of loans made annually to borrowers residing in this State; and the default rate for borrowers obtaining loans from the company.

The bill also requires student financing companies to provide the commissioner a copy of the promissory note, agreement, contract or other instrument used by the company during the previous year to substantiate that a private education loan has been extended to a borrower or that a borrower owes a debt to the company.

The bill requires the commissioner to create a publicly accessible website that includes the information about student financing companies registered in the State, including the name, address, telephone number and website for all registered student financing companies; a summary of the information submitted by the lender during registration; and copies of all model promissory notes, agreements, contracts, or other instruments provided to the commissioner.

The bill provides that the commissioner may impose a civil penalty not exceeding \$25,000 on any person for a violation of the registration provisions of the bill. Additionally, each violation which constitutes a knowing violation is a crime of the third degree.

The bill requires private education lenders to deliver certain information to a cosigner prior to the extension of a private education loan, including: how the private education loan obligation will appear on the cosigner's credit; how the cosigner will be notified if the private education loan becomes delinquent; and, eligibility for release of the cosigner's obligation on the private education loan.

For any private education loan that obligates a cosigner, a lender is required to provide the borrower and the cosigner an annual written notice containing information about cosigner release, including the administrative, non-judgmental criteria the lender requires to approve the release of the cosigner from the loan obligation and the process for applying for cosigner release.

Under the bill, in regard to cosigner release:

- if the borrower has met the applicable payment requirement to be eligible for cosigner release, the lender must send the borrower and the cosigner a written notification by mail and by electronic mail, where appropriate, informing the borrower and cosigner that the payments requirement to be eligible for cosigner release have been met;
- a lender is required to provide written notice to a borrower who applies for cosigner release, but whose application is incomplete. The written notice must include a description of the information needed to consider the application complete and the date by which the applicant must furnish the missing information;
- within 30 days after a borrower submits a completed application for cosigner release, the lender is required to send the borrower and cosigner a written notice informing them whether the cosigner release application has been approved or denied;

- a lender is prohibited from imposing any restriction that permanently bars a borrower from qualifying for cosigner release, including restricting the number of times a borrower may apply for cosigner release;
- a lender is prohibited from requiring greater than 12 consecutive, on-time payments as criteria for cosigner release;
- a borrower has the right to request an appeal of a lender's determination to deny a request for cosigner release, and the lender is required to permit the borrower to submit additional documentation evidencing the borrower's ability, willingness, and stability to meet the payment obligations; and
- lenders are required to establish and maintain a comprehensive record management system reasonably designed to ensure the accuracy, integrity, and completeness of data and other information about cosigner release applications and to ensure compliance with applicable State and federal laws.

The bill prohibits private education loans executed after the effective date of the bill from including a provision that permits the private educational lender to accelerate payments on the private education loan, except in cases of payment default. A lender may not place any loan or account into default or accelerate a loan for any reason, other than for payment default.

The bill provides that, in the event of the death of a cosigner, the lender may not attempt to collect against the cosigner's estate, other than for payment default.

The bill requires private education lenders, when notified of the total and permanent disability of a borrower or cosigner, to release any cosigner from the obligations of the cosigner under a private education loan. The lender may not attempt to collect a payment from a cosigner following a notification of total and permanent disability of the cosigner or borrower. In the event a cosigner is released from the obligations of a cosigner, a lender may not require the borrower to obtain another cosigner on the loan obligation and the lender may not declare a default or accelerate the debt against the borrower on the sole basis of the release of the cosigner from the loan obligation.

The bill requires lenders to notify borrowers and cosigners if a cosigner or borrower is released from the obligations of the private education loan within 30 days of the release in the case that the lender is notified of the total and permanent disability of a borrower or cosigner.

The bill requires lenders, when notified of the total and permanent disability of a borrower, to discharge the liability of the borrower and cosigner on the loan. After receiving a notification of

the total and permanent disability of a borrower, the lender may not attempt to collect on the outstanding liability of the borrower or cosigner or monitor the disability status of the borrower at any point after the date of discharge.

The bill requires private education lenders to deliver a statement that benefits and protections applicable to an existing loan may be lost due to refinancing before offering a person a private education loan that is being used to refinance an existing education loan. This information must be provided on a one-page information sheet in a 12-point font and be written in simple, clear, understandable and easily readable language.

If a private education lender offers any borrower flexible repayment options in connection with a private education loan, those flexible repayment options must be made available to all borrowers of loans by the lender. The bill requires lenders to:

- (1) provide on their website a description of any alternative repayment option offered by the lender for private education loans;
- (2) establish policies and procedures and implement them consistently in order to facilitate evaluation of private education loan flexible repayment option requests; and
- (3) consistently present and offer private education loan repayment options to borrowers with similar financial circumstances, if the lender offers repayment options.

The bill provides that a private education lender may not:

- (1) offer any private education loan that is not in conformity with the provisions of this bill, or that is in violation of any other State or federal law;
- (2) engage in any unfair, deceptive, or abusive act or practice;
- (3) make a private education loan upon security of any assignment of or order for the payment of any salary, wages, commissions or other compensation for services earned, or to be earned; or
- (4) make, advertise, print, display, publish, distribute, electronically transmit, telecast or broadcast, in any manner, any statement or representation which is false, misleading or deceptive.

The bill requires private education lenders to establish and maintain records and permit the department to access and copy any records required to be maintained pursuant to the bill. Loan files, including any records specified for retention by regulation adopted by the commissioner, must be retained for not less than six years after the termination of the loan account.

The bill provides that, in addition to any other information required under applicable federal or State law, a debt collector attempting to collect a private education loan must provide in the first debt collection communication with the borrower, and at any other time the borrower requests, certain specific documentation enumerated the bill. The bill also lists the information and

documentation that the creditor is required to possess prior to collecting or attempting to collect a private education loan debt.

Following a payment default on a private education loan by a borrower, and before a creditor may accelerate the maturity of the loan or commence a legal action against the borrower, a lender is required to provide to the borrower a notice of intention to accelerate the loan. The creditor must provide the notice at least 30 days, but not more than 180 days, in advance of the action, and must provide a copy of the notice to the department at the same time it is provided to the borrower.

The bill provides that an action to enter a default judgment against a borrower must be commenced within six years of the date the borrower failed to make a payment.

The bill requires a creditor or lender seeking to enter a default judgment against a borrower to attach to the complaint filed in a court of competent jurisdiction certain documentation and information which are enumerated in the bill.

If a creditor or lender fails to comply with the filing requirements of the bill, a borrower may bring an action, including a counterclaim, against the creditor to recover or obtain certain relief and damages.

The bill also provides that a borrower or cosigner who suffers damage as a result of a violation may bring an action in a court of competent jurisdiction to recover: actual damages, but in no case less than \$500; an order enjoining the methods, acts, or practices; restitution of property; punitive damages; attorney's fees; and any other relief that the court deems proper.