SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2358

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 22, 2020

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2358, with committee amendments.

As amended, this bill requires registration of private education lenders and establishes protections for private education borrowers.

The bill prohibits a creditor, lender, or student financing company from extending student financing or a private education loan to a New Jersey resident without first registering with the Commissioner of Banking and Insurance and with the Nationwide Multistate Licensing System and Registry. Creditors, lenders, and student financing companies are required to provide the commissioner, at the time of registration and not less than once per year thereafter, certain information about the entities and the student loans that they provide. The commissioner is required to post on the department's website information about private education lenders registered in the State. The bill also requires creditors, lenders, and student financing companies to post on their websites a copy of each model promissory note, agreement, contract or other instrument used by the creditor, lender, or student financing company to substantiate a private education loan. 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. 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 related to impacts on the cosigner in certain circumstances, prior to the extension of a private education loan that requires a cosigner. For any private education loan that obligates a cosigner and provides for cosigner release, a lender is required to provide the borrower and the cosigner an annual written or electronic notice containing clear and conspicuous information about cosigner release. Under the bill, 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 notification informing them that the payments requirement to be eligible for cosigner release has been met.

The bill requires a lender to provide written notice to a borrower who applies for cosigner release, but whose application is incomplete.

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 that informs them whether the cosigner release application has been approved or denied.

The bill prohibits a lender from imposing any restriction that permanently bars a borrower from qualifying for cosigner release. For any private education loan executed after the effective date of the bill, a lender is prohibited from requiring greater than 12 consecutive, on-time payments of principal and interest as criteria to apply for cosigner release. Under the bill, if a borrower or cosigner requests a change in terms that restarts the count of consecutive, on-time payments, the lender must notify the borrower and cosigner in writing, by mail or by electronic mail, of the impact of the change and provide the borrower or cosigner the right to withdraw or reverse the request. The bill provides that 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 certain additional documentation. The bill requires lenders to establish and maintain a comprehensive record management system.

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, in whole or in part, payments on the private education loan, except in cases of payment default. The bill prohibits a private education loan executed prior to or after the effective date of the bill from including a provision that permits a lender to attempt to collect against the cosigner's estate, other than for payment default. Upon receiving notification of the death or bankruptcy of a cosigner, when the loan is not more than 60 days delinquent at the time of the notification, the lender may not change any terms or benefits under the promissory note, repayment schedule, repayment terms, or monthly payment amount or any other loan provision.

Under the bill, a lender, upon determination of the total and permanent disability of a borrower, is required to release any cosigner from his obligations under a private education loan. Upon determination of the total and permanent disability of a cosigner, a lender is required to release that individual cosigner from the obligations of the cosigner. 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. The bill requires lenders that extend private education loans to provide the borrower the option to designate an individual to have the legal authority to act on behalf of the borrower with respect to the private education loan in the event of the total and permanent disability of the borrower. In the event a cosigner is released from the obligations of a private education loan, a lender may not require the borrower to obtain another cosigner on the loan obligation. The bill provides that lenders 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, upon determination of the total and permanent disability of a borrower, to discharge the liability of the borrower and cosigner on the loan. After making the determination of the total and permanent disability of a borrower, a lender may not attempt to collect on the outstanding liability of the borrower or cosigner or monitor the disability status of the borrower 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. If a 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 provides that a private education lender may not: offer any private education loan that is not in conformity with the bill, or that is in violation of any other State or federal law; engage in any unfair, deceptive, or abusive act or practice; or 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 publish the criteria used to determine borrower interest rates in all places where the interest rate is published, if the lender does not offer the same interest rate to all borrowers.

The bill provides that a debt collector attempting to collect a private education loan must provide certain documentation related to the loan in the first debt collection communication with the borrower and at any other time the borrower requests the documentation. The bill also prohibits creditors from collecting or attempting to collect a private education loan debt unless the creditor possesses certain information and documentation related to the loan.

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 commence legal action against a borrower to attach certain documentation and information to a complaint filed in a court of competent jurisdiction. If a creditor 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 certain relief and damages.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- make several modifications to the bill's definition of "total and permanent disability";
- clarify that creditors, lenders, as well as student financing companies, are required to register with the Commissioner of Banking and Insurance;
- require creditors, lenders, and student financing companies to register with the Nationwide Multistate Licensing System and Registry;
- require a creditor, lender, or student financing company to provide the eligibility criteria to receive the lowest advertised starting interest rate and the percentage of applicants who receive that rate;
- remove a provision of the bill requiring the commissioner to create a website containing information on registered private education lenders and instead require the commissioner to post the information on the website of the Department of Banking and Insurance;
- remove from the bill provisions requiring the commissioner to collect and post copies of promissory notes, agreements, contracts or other instruments used to substantiate private education loans and instead require creditors, lenders, and student financing companies to post the information on their websites;
- provide that the criteria used by a lender to approve a cosigner release, which must be annually provided to a borrower and cosigner, may include information on minimum income and credit requirements;
- remove the borrower's consumer report and credit score from the list of documents or information that can be requested by a borrower who was denied a request for cosigner release;
- remove a provision of the bill which permitted a borrower who has paid the equivalent of 12 months of principal and interest payments within any 12-month period to be considered to have satisfied the consecutive, on-time payment requirement for cosigner release, even if the borrower has not made payments monthly;
- make retroactive a provision of the bill that prohibits a private education loan from including a provision that permits the lender to attempt to collect against the cosigner's estate, other than for payment default;

- provide that a private education lender, upon determination of the total and permanent disability of a cosigner, will release that cosigner from his obligations under a private education loan;
- remove a provision of the bill that prohibited a private education lender from making a 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;
- remove a provision of the bill requiring a private education lender to establish and maintain certain student loan records and permitting the department to access those records;
- require that, if a private education lender does not offer the same interest rate to all borrowers, the lender must publish the criteria used to determine interest rates for borrowers in all places where the interest rate is published;
- remove from the list of items that a creditor must possess in order to collect a private education loan debt, a copy of the self-certification form and any other needs analysis conducted by the original creditor;
- remove a provision of the bill which required that a private education lender's notice of intention to accelerate the maturity of a loan be in writing, provided to the department, and sent to the borrower by registered or certified mail;
- remove punitive damages from the list of items that a borrower may recover in an action against a creditor for failure to comply with certain filing requirements under the bill and from the list of items that a borrower or cosigner who suffers damage as a result of a violation of the bill's provisions may recover in an action brought in a court of competent jurisdiction; and
- authorize the department to promulgate rules and regulations to effectuate the provisions of the bill.

FISCAL IMPACT:

The Office of Legislative Services (OLS) finds that the bill could increase annual State expenditures and revenues by indeterminate amounts. The fiscal impacts will depend on administrative decisions to be made by the Department of Banking and Insurance (DOBI) concerning the registration procedures for creditors, lenders, and student financing companies that extend student financing or private education loans to residents of this State; the cost to post certain information on DOBI's website; and the amount of civil penalties DOBI may collect.

Further, the OLS notes that this bill may result in an indeterminate increase in State expenditures to the Judiciary. The expenditure increase will be tied to potential growth in the Judiciary's caseload. This expenditure increase may be partially, if not fully, offset by an indeterminate amount of fines collected under the bill.