

ASSEMBLY HIGHER EDUCATION COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2358

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 8, 2021

The Assembly Higher Education Committee reports favorably Senate Bill No. 2358 (1R) 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.

As amended and reported by the committee, this bill is identical to Assembly Bill No. 4395 (1R), which was also amended and reported by the committee on this same date.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- modify the bill's definition of "private education loan" to specify that a private education loan does not include an extension of credit in which a covered educational institution is the creditor if an interest rate is not applied to the credit balance and the term of the extension of credit is in effect until the student completes the educational program; and
- specify that the Commissioner of Banking and Insurance will establish and collect a registration fee for creditors, lenders, and student financing companies.