

**SENATE, No. 1974**

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**STATE OF NEW JERSEY**

**220th LEGISLATURE**

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INTRODUCED MARCH 3, 2022

**Sponsored by:**

**Senator SANDRA B. CUNNINGHAM**

**District 31 (Hudson)**

**Senator NIA H. GILL**

**District 34 (Essex and Passaic)**

**SYNOPSIS**

Requires registration of private education lenders; establishes protections for private education borrowers.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 9/22/2022)**

1 AN ACT concerning private education lenders and supplementing  
2 P.L.2019, c.200 (C.17:16ZZ-1 et seq.).

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. As used in this act:

8 “Commissioner” means the Commissioner of Banking and  
9 Insurance.

10 “Cosigner” means:

11 (1) any individual who is liable for the obligation of another  
12 without compensation, regardless of how the individual is  
13 designated in the contract or instrument with respect to that  
14 obligation, including an obligation under a private education loan  
15 extended to consolidate a borrower’s pre-existing private education  
16 loans; and

17 (2) shall include any person whose signature is requested as a  
18 condition to grant credit or to forbear on collection.

19 As used in this act, “cosigner” shall not include a spouse of an  
20 individual described in paragraph (1), the signature of whom is  
21 needed to perfect the security interest in a loan.

22 “Creditor” means:

23 (1) the original creditor, where ownership of a private education  
24 loan debt has not been sold, assigned, or transferred;

25 (2) the person or entity that owned the private education loan  
26 debt at the time the debt defaulted, even if that person or entity did  
27 not originate the private education loan, and where such a debt has  
28 not subsequently been sold, transferred or assigned; or

29 (3) a person or entity that purchased a defaulted private  
30 education loan debt for collection purposes, whether it collects the  
31 debt itself, hires a third party for collection, or hires an attorney for  
32 collection litigation.

33 “Debt collector” means a person who regularly collects or  
34 attempts to collect, directly or indirectly, consumer debts originally  
35 owed or due or asserted to be owed or due another. The term shall  
36 not include an officer or employee of a creditor who, in the name of  
37 the creditor, collects debts for that creditor, but it shall include a  
38 creditor who, in the process of collecting its own debt, uses a name  
39 other than its own that would indicate that a third person is  
40 collecting or attempting to collect the debt.

41 “Department” means the Department of Banking and Insurance.

42 “Original Creditor” means the private education lender identified  
43 in a promissory note, loan agreement, or loan contract entered into  
44 with a student loan borrower or cosigner.

45 “Private education lender” or “lender” means any person  
46 engaged in the business of securing, making, or extending private  
47 education loans, or any holder of a private education loan. “Private  
48 education lender” shall not include the following persons, only to  
49 the extent that State regulation is preempted by federal law:

1 (1) any federally chartered bank, savings bank, savings and loan  
2 association, or credit union;

3 (2) any wholly owned subsidiary of a federally chartered bank  
4 or credit union; and

5 (3) any operating subsidiary where each owner of the operating  
6 subsidiary is wholly owned by the same federally chartered bank or  
7 credit union.

8 “Private education loan” means an extension of credit that:

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

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

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

16 (4) shall not include an extension of credit in which the covered  
17 educational institution is the creditor if:

18 (a) the term of the extension of credit is 90 days or less; or

19 (b) an interest rate shall not be applied to the credit balance and  
20 the term of the extension of credit is in effect until the student  
21 completes the educational program.

22 “Private education loan borrower” or “borrower” means any  
23 resident of this State who has received or agreed to pay a private  
24 education loan for the borrower’s own educational expenses.

25 “Student financing” means:

26 (1) an extension of credit that:

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

29 (b) is extended to a consumer expressly, in whole or in part, for  
30 postsecondary educational expenses, regardless of whether the  
31 extension of credit is provided by the provider of postsecondary  
32 education that the student attends; and

33 (c) shall not include any loan that is secured by real property or  
34 a dwelling; or

35 (2) a debt or obligation owed or incurred by a consumer,  
36 contractual or otherwise, that:

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

39 (b) is incurred by the consumer, in whole or in part, expressly to  
40 finance postsecondary education expenses regardless of whether the  
41 debt incurred is owed to the provider of postsecondary education  
42 that the student attends; and

43 (c) shall not include any loan that is secured by real property or  
44 a dwelling.

45 “Student financing company” means any person engaged in the  
46 business of securing, making, or extending credit to a consumer for  
47 postsecondary education expenses, or any holder of a debt incurred  
48 by a consumer to finance postsecondary education expenses.

49 “Student financing company” shall not include the following

1 persons, only to the extent that State regulation is preempted by  
2 federal law:

3 (1) any federally chartered bank, savings bank, savings and loan  
4 association, or credit union;

5 (2) any wholly owned subsidiary of a federally chartered bank  
6 or credit union; and

7 (3) any operating subsidiary where each owner of the operating  
8 subsidiary is wholly owned by the same federally chartered bank or  
9 credit union.

10 "Total and permanent disability" is the condition of an individual  
11 who:

12 (1) has been determined by the United States Secretary of  
13 Veterans Affairs to be unemployable due to a service-connected  
14 disability; or

15 (2) is eligible for Social Security Disability Insurance or  
16 Supplemental Security Income and whose next scheduled disability  
17 review will be five to seven years or more from the date of the  
18 individual's last Social Security Administration disability  
19 determination; or

20 (3) is unable to work and earn money or attend school by reason  
21 of any medically determinable physical or mental impairment, as  
22 certified by a doctor of medicine or a doctor of osteopathy who is  
23 legally licensed to practice in the United States, that can be  
24 expected to result in death, has lasted for a continuous period of not  
25 less than 60 months, or can be expected to last for a continuous  
26 period of not less than 60 months.

27 An individual shall not be considered "totally and permanently  
28 disabled" under this act on the basis of a condition that existed at  
29 the time the individual applied for the loan, unless the individual's  
30 condition has deteriorated later so as to render the individual totally  
31 and permanently disabled.

32

33 2. a. No creditor, lender, or student financing company shall  
34 extend student financing or a private education loan to a resident of  
35 this State without first registering with the Commissioner of  
36 Banking and Insurance as provided in this section and with the  
37 Nationwide Multistate Licensing System and Registry in  
38 accordance with any requirements established by that entity. The  
39 commissioner shall establish and collect a registration fee.

40 b. A creditor, lender, or student financing company shall:

41 (1) register with the commissioner pursuant to any registration  
42 procedures set forth by the commissioner by regulation;

43 (2) provide the commissioner, at the time of registration and not  
44 less than once per year thereafter, with the following documents and  
45 information:

46 (a) a list of all schools at which the creditor, lender, or student  
47 financing company has provided loans to a borrower residing in this  
48 State;

- 1 (b) the volume of loans made annually to borrowers residing in  
2 this State;
- 3 (c) the volume of loans made annually at each school identified  
4 under subparagraph (a) of this paragraph;
- 5 (d) the default rate for borrowers obtaining loans from the  
6 creditor, lender, or student financing company;
- 7 (e) the eligibility criteria to receive the lowest advertised  
8 starting interest rate and the percentage of applicants who receive  
9 the lowest advertised starting interest rate; and
- 10 (f) the name and address of the creditor, lender, or student  
11 financing company and any officer, director, partner or owner of a  
12 controlling interest of the creditor, lender, or student financing  
13 company.
- 14 c. The commissioner shall post on the department's Internet  
15 website the following information about private education lenders  
16 registered in this State:
- 17 (1) the name, address, telephone number and website for all  
18 registered private education lenders; and
- 19 (2) a summary of the information required under subparagraphs  
20 (a) through (e) of paragraph (2) of subsection b. of this section
- 21 d. A creditor, lender, or student financing company shall post  
22 on its website a copy of each model promissory note, agreement,  
23 contract or other instrument used by the creditor, lender, or student  
24 financing company during the previous year to substantiate that a  
25 private education loan has been extended to a borrower or that a  
26 borrower owes a debt to the creditor, lender, or student financing  
27 company.
- 28 e. The commissioner may impose a civil penalty not exceeding  
29 \$25,000 on any person for a violation of this section. Each  
30 violation of this section, including any order, rule or regulation  
31 made or issued pursuant to the act, shall constitute a separate  
32 offense. Additionally, each violation which constitutes a knowing  
33 violation shall be a crime of the third degree.
- 34 f. The commissioner may order that any person who has been  
35 found to have knowingly violated any provision of this section, or  
36 of the rules and regulations issued pursuant to this section, be  
37 barred for a term not exceeding 10 years from acting as a private  
38 education lender, or a stockholder, or an officer, director, partner or  
39 other owner, or an employee of a private education lender. The  
40 commissioner may order the rescission of a loan made by a person  
41 who fails to register pursuant to this section. A violation of an  
42 order shall be a crime of the third degree.
- 43
- 44 3. a. Prior to the extension of a private education loan that  
45 requires a cosigner, a private education lender shall deliver the  
46 following information to the cosigner:
- 47 (1) how the private education loan obligation shall appear on the  
48 cosigner's credit;

1 (2) how the cosigner shall be notified if the private education  
2 loan becomes delinquent, including how the cosigner can cure the  
3 delinquency in order to avoid negative credit furnishing and loss of  
4 cosigner release eligibility; and

5 (3) for a loan that provides a cosigner release option, the  
6 conditions for eligibility for release of the cosigner's obligation on  
7 the private education loan, including the number of on-time  
8 payments and any other criteria required to approve the release of  
9 cosigner from the loan obligation.

10 b. For any private education loan that obligates a cosigner and  
11 provides for cosigner release, a lender shall provide the borrower  
12 and the cosigner an annual written or electronic notice containing  
13 clear and conspicuous information about cosigner release, including  
14 the administrative, non-judgmental criteria the lender requires to  
15 approve the release of the cosigner from the loan obligation and the  
16 process for applying for cosigner release. Such criteria may include  
17 minimum income or credit, or both income and credit, requirements  
18 that the lender requires the borrower to satisfy for cosigner release.

19 c. If the borrower has met the applicable payment requirement  
20 to be eligible for cosigner release, the lender shall send the  
21 borrower and the cosigner a written notification by mail or by  
22 electronic mail, where a borrower or cosigner has elected to receive  
23 electronic communications from the lender, informing the borrower  
24 and cosigner that the payments requirement to be eligible for  
25 cosigner release have been met. The notification shall also include  
26 information about any additional criteria to qualify for cosigner  
27 release, and the procedure to apply for cosigner release.

28 d. A lender shall provide written notice to a borrower who  
29 applies for cosigner release, but whose application is incomplete.  
30 The written notice shall include a description of the information  
31 needed to consider the application complete and the date by which  
32 the applicant shall furnish the missing information.

33 e. Within 30 days after a borrower submits a completed  
34 application for cosigner release, the lender shall send the borrower  
35 and cosigner a written notice that informs the borrower and  
36 cosigner whether the cosigner release application has been approved  
37 or denied. If the lender denies a request for cosigner release, the  
38 borrower may request any documents or information used in the  
39 determination, including, but not limited to, the credit score  
40 threshold used by the lender and any other documents specific to  
41 the borrower\_in the possession of the lender or the lender's third-  
42 party\_contractors. The lender shall also provide any adverse action  
43 notices required under applicable federal law if the denial is based  
44 in whole or in part on any information contained in a consumer  
45 report.

46  
47 4. a. If a private education loan provides a cosigner release  
48 option, in response to a written or oral request for cosigner release,

1 a lender shall provide the information described in subsection b. of  
2 section 3 of this act.

3 b. If a private education loan provides a cosigner release  
4 option, a lender shall not impose any restriction that permanently  
5 bars a borrower from qualifying for cosigner release, including  
6 restricting the number of times a borrower may apply for cosigner  
7 release.

8 c. A lender shall not impose any negative consequences on any  
9 cosigner during the 60 days following the issuance of the notice  
10 required pursuant to subsection d. of section 3 of this act, or until  
11 the lender makes a final determination about a borrower's cosigner  
12 release application. For the purpose of this subsection, "negative  
13 consequences" includes, but is not limited to, the imposition of  
14 additional eligibility criteria, negative credit reporting, lost  
15 eligibility for cosigner release, late fees, interest capitalization, or  
16 other financial injury.

17 d. For any private education loan executed after the effective  
18 date of this act, a lender shall not require greater than 12  
19 consecutive, on-time payments of principal and interest as the initial  
20 criteria for the borrower to submit an application for cosigner  
21 release.

22 e. If a borrower or cosigner requests a change in  
23 terms that restarts the count of consecutive, on-time payments  
24 required for cosigner release, the lender shall notify the borrower  
25 and cosigner in writing, by mail, or by electronic mail, if a borrower  
26 or cosigner has elected to receive electronic communications from  
27 the lender, of the impact of the change and provide the borrower or  
28 cosigner the right to withdraw or reverse the request to avoid that  
29 impact.

30 f. A borrower shall have the right to request an appeal of a  
31 lender's determination to deny a request for cosigner release, and  
32 the lender shall permit the borrower to submit additional  
33 documentation evidencing the borrower's ability, willingness, and  
34 stability to meet the payment obligations. The borrower may request  
35 review of the cosigner release determination by another employee.

36 g. A lender shall establish and maintain a comprehensive  
37 record management system reasonably designed to ensure the  
38 accuracy, integrity, and completeness of data and other information  
39 about cosigner release applications and to ensure compliance with  
40 applicable state and federal laws, including but not limited to the  
41 "Equal Credit Opportunity Act," 15 U.S.C. s.1691 et seq., and the  
42 "Fair Credit Reporting Act," 15 U.S.C. s.1681 et seq. This system  
43 shall include the number of cosigner release applications received,  
44 the approval and denial rate, and the primary reasons for any denial.

45 h. (1) A lender shall provide a cosigner with access to all  
46 documents or records related to the cosigned private education loan  
47 that are available to the borrower.

48 (2) If a lender provides electronic access to documents and  
49 records for a borrower, it shall provide equivalent electronic access  
50 to the cosigner.

1       5. a. (1) A private education loan executed after the effective  
2 date of this act shall not include a provision that permits the private  
3 educational lender to accelerate, in whole or in part, payments on  
4 the private education loan, except in cases of payment default. A  
5 lender shall not place any loan or account into default or accelerate  
6 a loan for any reason, other than for payment default.

7       (2) A private education loan prior to the effective date of this act  
8 shall permit the lender to accelerate payments only if the  
9 promissory note or loan agreement explicitly authorizes an  
10 acceleration and only for the reasons stated in the note or  
11 agreement.

12       b. (1) A private education loan executed prior to or after the  
13 effective date of this act shall not include a provision that permits  
14 the private education lender to attempt to collect against the  
15 cosigner's estate, other than for payment default.

16       (2) Upon receiving notification of the death or bankruptcy of a  
17 cosigner, when the loan is not more than 60 days delinquent at the  
18 time of the notification, the lender shall not change any terms or  
19 benefits under the promissory note, repayment schedule, repayment  
20 terms, or monthly payment amount or any other provision  
21 associated with the loan.

22       c. A lender shall not place any loan or account into default or  
23 accelerate a loan while a borrower is seeking a loan modification or  
24 enrollment in a flexible repayment plan, except that a lender may  
25 place a loan or account into default or accelerate a loan for payment  
26 default 90 days following the borrower's default.

27  
28       6. a. A private education lender, upon determination of the  
29 total and permanent disability of a borrower, shall release any  
30 cosigner from the obligations of the cosigner under a private  
31 education loan. The lender shall not attempt to collect a payment  
32 from any cosigner following a notification of total and permanent  
33 disability of the borrower.

34       b. A private education lender, upon determination of the total  
35 and permanent disability of a cosigner, shall release that individual  
36 cosigner from the obligations of the cosigner under a private  
37 education loan.

38       c. A lender shall notify a borrower and cosigner for a private  
39 education loan if either a cosigner or borrower is released from the  
40 obligations of the private education loan under this section, within  
41 30 days of the release.

42       d. Any lender that extends a private education loan shall  
43 provide the borrower an option to designate an individual to have  
44 the legal authority to act on behalf of the borrower with respect to  
45 the private education loan in the event of the total and permanent  
46 disability of the borrower.

47       e. (1) In the event a cosigner is released from the obligations  
48 of a private education loan pursuant to subsection a. of this section,

1 the lender shall not require the borrower to obtain another cosigner  
2 on the loan obligation.

3 (2) A lender shall not declare a default or accelerate the debt  
4 against the borrower on the sole basis of the release of the cosigner  
5 from the loan obligation.

6 f. A lender shall, upon determination of the total and  
7 permanent disability of a borrower, discharge the liability of the  
8 borrower and cosigner on the loan.

9 g. After making the determination described in subsection f. of  
10 this section, the lender shall not:

11 (1) attempt to collect on the outstanding liability of the borrower  
12 or cosigner; or

13 (2) monitor the disability status of the borrower at any point  
14 after the date of discharge.

15

16 7. a. Prior to offering a person a private education loan that is  
17 being used to refinance an existing education loan, a private  
18 education lender shall provide the person a disclosure that benefits  
19 and protections applicable to the existing loan may be lost due to  
20 the refinancing.

21 The information provided pursuant to this subsection shall be  
22 provided on a one-page information sheet in a 12-point font and  
23 shall be written in simple, clear, understandable and easily readable  
24 language as provided in P.L.1980, c.125 (C.56:12-1 et seq.).

25 b. If a private education lender offers any borrower flexible  
26 repayment options in connection with a private education loan,  
27 those flexible repayment options shall be made available to all  
28 borrowers of loans by the lender. A lender shall:

29 (1) provide on its website a description of any alternative  
30 repayment options offered by the lender for private education loans;

31 (2) establish policies and procedures and implement them  
32 consistently in order to facilitate evaluation of private education  
33 loan flexible repayment option requests, including providing  
34 accurate information regarding any private education loan  
35 alternative repayment options that may be available to the borrower  
36 through the promissory note or that may have been marketed to the  
37 borrower through marketing materials; and

38 (3) consistently present and offer private education loan  
39 repayment options to borrowers with similar financial  
40 circumstances, if the lender offers repayment options.

41

42 8. a. No private education lender shall:

43 (1) offer any private education loan that is not in conformity  
44 with this act, or that is in violation of any other State or federal law;

45 (2) engage in any unfair, deceptive, or abusive act or practice;  
46 or

47 (3) make, advertise, print, display, publish, distribute,  
48 electronically transmit, telecast or broadcast, in any manner, any  
49 statement or representation which is false, misleading or deceptive.

1       b. If a private education lender does not offer the same interest  
2 rate to all borrowers, the private education lender shall publish the  
3 criteria used to determine the rate for which a borrower is eligible  
4 in all places where the interest rate is published.

5  
6       9. a. In addition to any other information required under  
7 applicable federal or State law, a debt collector attempting to collect  
8 a private education loan shall provide in the first debt collection  
9 communication with the borrower and at any other time the  
10 borrower requests this documentation:

11       (1) the name of the owner of the private education loan debt;

12       (2) the original creditor's name at the time of default, if  
13 applicable;

14       (3) the original creditor's account number used to identify the  
15 private education loan debt at the time of default, if the original  
16 creditor used an account number to identify the private education  
17 loan debt at the time of default;

18       (4) the amount due at the time of default;

19       (5) a schedule of all transactions credited or debited to the  
20 student loan account;

21       (6) a copy of all pages of the contract, application or other  
22 documents evidencing the private education loan borrower's  
23 liability for the private education loan, stating all terms and  
24 conditions applicable to the private education loan; and

25       (7) a clear and conspicuous statement disclosing that the  
26 borrower has a right to request all information possessed by the  
27 creditor related to the defaulted private education loan debt,  
28 including, but not limited to the required information described in  
29 paragraph (3) of this subsection.

30       b. A creditor shall not collect or attempt to collect a private  
31 education loan debt unless the creditor possesses:

32       (1) the name of the owner of the private education loan;

33       (2) the original creditor's name at the time of default, if  
34 applicable;

35       (3) the original creditor's account number used to identify the  
36 private education loan at the time of default, if the original creditor  
37 used an account number to identify the private education loan at the  
38 time of default;

39       (4) the amount due at default;

40       (5) a schedule of all transactions credited or debited to the  
41 student loan account;

42       (6) an itemization of interest and fees, if any, claimed to be  
43 owed and whether those were imposed by the original creditor or  
44 any subsequent owners of the private education loan;

45       (7) the date that the private education loan was incurred;

46       (8) a billing statement or other account record indicating the  
47 date of the first partial payment or the first day that a payment was  
48 missed, whichever is earlier;

1 (9) a billing statement or other account record indicating the  
2 date of the last payment made by the borrower, if applicable;

3 (10) any payments, settlement, or financial remuneration of any  
4 kind paid to the creditor by a guarantor, co-signer, or surety, and the  
5 amount of payment received;

6 (11) the names of all persons or entities that owned the private  
7 education loan after the time of default, if applicable, and the date  
8 of each sale or transfer;

9 (12) a log of all collection attempts made in the last 12 months  
10 including date and time of all calls and letters;

11 (13) copies of all settlement letters made in the last 12 months,  
12 or, in the alternative, a statement that the creditor has not attempted  
13 to settle or otherwise renegotiate the debt prior to suit;

14 (14) a copy of all pages of the contract or other documents  
15 evidencing the private education loan borrower's liability for the  
16 private education loan, stating all terms and conditions applicable to  
17 the private education loan; and

18 (15) documentation establishing that the creditor is the owner of  
19 the specific individual private education loan at issue. If the private  
20 education loan was assigned more than once, the creditor shall  
21 possess each assignment or other writing evidencing the transfer of  
22 ownership of the specific individual private education loan to  
23 establish an unbroken chain of ownership, beginning with the  
24 original creditor to the first subsequent creditor and each additional  
25 creditor. Each assignment or other writing evidencing transfer of  
26 ownership or the right to collect shall contain the original creditor's  
27 account number, redacted for security purposes to show only the  
28 last four digits, of the private education loan purchased or otherwise  
29 assigned, the date of purchase and assignment, and shall clearly  
30 show the borrower's correct name associated with the original  
31 account number. The assignment or other writing attached shall be  
32 that by which the creditor or other assignee acquired the private  
33 education loan, not a document prepared for litigation or collection  
34 purposes.

35 c. Failure by a creditor or debt collector to produce to a  
36 borrower, within 30 days of a verbal or written request, any  
37 documentation described in subsection a. or b. of this section shall  
38 be a violation of this act.

39

40 10. a. Upon a payment default on a private education loan by a  
41 borrower, and before a creditor may accelerate the maturity of the  
42 loan or commence a legal action against the borrower, the lender  
43 shall provide to the borrower a notice of intention to accelerate the  
44 loan. The creditor shall provide the notice at least 30 days, but not  
45 more than 180 days, in advance of the action, and shall provide a  
46 copy of the notice to the department at the same time it is provided  
47 to the borrower.

1       b. A notice provided pursuant to this section shall contain a  
2 certification that the lender possesses all of the information required  
3 pursuant to subsection b. of section 9 of this act.

4  
5       11. a. An action to enter a judgment against a borrower shall be  
6 commenced within six years of the date the borrower failed to make  
7 a payment.

8       b. A creditor or lender commencing a legal action against a  
9 borrower shall attach the following documentation and information  
10 to the complaint filed in a court of competent jurisdiction:

11       (1) a copy of the notice of intention provided pursuant to section  
12 10 of this act, including the information a lender is required to  
13 retain pursuant to subsection b. of section 9 of this act;

14       (2) the date of the first partial or missed payment;

15       (3) the date of the last payment, if applicable;

16       (4) a copy of any self-certification or needs analysis conducted  
17 by the original creditor prior to origination of the loan;

18       (5) a statement as to whether the creditor is willing to  
19 renegotiate the terms of the debt;

20       (6) a statement as to whether the debt is eligible for any flexible  
21 repayment option; and

22       (7) a statement as to whether the debt is dischargeable in  
23 bankruptcy.

24       Failure to attach the information required by this subsection shall  
25 be an affirmative defense.

26       c. No court shall enter a judgment on a private education loan  
27 obligation if the creditor or lender does not comply with the  
28 requirements of this section.

29       d. If a creditor fails to comply with the requirements of this  
30 section, a borrower may bring an action, including a counterclaim,  
31 against the creditor to recover or obtain:

32       (1) an order setting aside or vacating any default judgment  
33 entered against the person;

34       (2) a judgment in favor of the borrower;

35       (3) actual damages, but in no case shall the total award of  
36 damages action be less than \$500;

37       (4) restitution of all moneys invalidly taken from or paid by the  
38 borrower after a judgment was obtained by a creditor;

39       (5) injunctive relief;

40       (6) correction of the borrower's credit report;

41       (7) attorney's fees and court costs; and

42       (8) any other relief that the court deems proper.

43       e. In addition to any other remedies provided by this section or  
44 otherwise provided by law, whenever it is proven by a  
45 preponderance of the evidence that a creditor has filed information  
46 with the court that is required pursuant to the act that is false, the  
47 court shall award treble damages to the borrower, but in no case  
48 shall the total award of damages action be less than \$1,500.

- a. Actual damages, but in no case shall the total award of damages action be less than \$500;
- b. An order enjoining the methods, acts, or practices;
- c. Restitution of property;
- d. Attorney's fees; and
- e. Any other relief that the court deems proper.

14. This act shall take effect on the 180th day next following enactment.

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

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

1 about cosigner release. Under the bill, if the borrower has met the  
2 applicable payment requirement to be eligible for cosigner release,  
3 the lender must send the borrower and the cosigner a notification  
4 informing them that the payments requirement to be eligible for  
5 cosigner release has been met.

6 The bill requires a lender to provide written notice to a borrower  
7 who applies for cosigner release, but whose application is  
8 incomplete. Within 30 days after a borrower submits a completed  
9 application for cosigner release, the lender is required to send the  
10 borrower and cosigner a written notice that informs them whether  
11 the cosigner release application has been approved or denied.

12 The bill prohibits a lender from imposing any restriction that  
13 permanently bars a borrower from qualifying for cosigner release.  
14 For any private education loan executed after the effective date of  
15 the bill, a lender is prohibited from requiring greater than 12  
16 consecutive, on-time payments of principal and interest as criteria  
17 to apply for cosigner release. Under the bill, if a borrower or  
18 cosigner requests a change in terms that restarts the count of  
19 consecutive, on-time payments, the lender must notify the borrower  
20 and cosigner in writing, by mail or by electronic mail, of the impact  
21 of the change and provide the borrower or cosigner the right to  
22 withdraw or reverse the request. The bill provides that a borrower  
23 has the right to request an appeal of a lender's determination to  
24 deny a request for cosigner release, and the lender is required to  
25 permit the borrower to submit certain additional documentation.  
26 The bill requires lenders to establish and maintain a comprehensive  
27 record management system.

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

41 Under the bill, a lender, upon determination of the total and  
42 permanent disability of a borrower, is required to release any  
43 cosigner from his obligations under a private education loan. Upon  
44 determination of the total and permanent disability of a cosigner, a  
45 lender is required to release that individual cosigner from the  
46 obligations of the cosigner. The bill requires lenders to notify  
47 borrowers and cosigners if a cosigner or borrower is released from  
48 the obligations of the private education loan, within 30 days of the  
49 release. The bill requires lenders that extend private education

1 loans to provide the borrower the option to designate an individual  
2 to have the legal authority to act on behalf of the borrower with  
3 respect to the private education loan in the event of the total and  
4 permanent disability of the borrower. In the event a cosigner is  
5 released from the obligations of a private education loan, a lender  
6 may not require the borrower to obtain another cosigner on the loan  
7 obligation. The bill provides that lenders may not declare a default  
8 or accelerate the debt against the borrower on the sole basis of the  
9 release of the cosigner from the loan obligation. The bill requires  
10 lenders, upon determination of the total and permanent disability of  
11 a borrower, to discharge the liability of the borrower and cosigner  
12 on the loan. After making the determination of the total and  
13 permanent disability of a borrower, a lender may not attempt to  
14 collect on the outstanding liability of the borrower or cosigner or  
15 monitor the disability status of the borrower after the date of  
16 discharge.

17 The bill requires private education lenders to deliver a statement  
18 that benefits and protections applicable to an existing loan may be  
19 lost due to refinancing before offering a person a private education  
20 loan that is being used to refinance an existing education loan. If a  
21 lender offers any borrower flexible repayment options in connection  
22 with a private education loan, those flexible repayment options  
23 must be made available to all borrowers of loans by the lender.

24 The bill provides that a private education lender may not: offer  
25 any private education loan that is not in conformity with the bill, or  
26 that is in violation of any other State or federal law; engage in any  
27 unfair, deceptive, or abusive act or practice; or make, advertise,  
28 print, display, publish, distribute, electronically transmit, telecast or  
29 broadcast, in any manner, any statement or representation which is  
30 false, misleading or deceptive. The bill requires private education  
31 lenders to publish the criteria used to determine borrower interest  
32 rates in all places where the interest rate is published, if the lender  
33 does not offer the same interest rate to all borrowers.

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

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

1       The bill provides that an action to enter a default judgment  
2 against a borrower must be commenced within six years of the date  
3 the borrower failed to make a payment. The bill requires a creditor  
4 or lender seeking to commence legal action against a borrower to  
5 attach certain documentation and information to a complaint filed in  
6 a court of competent jurisdiction. If a creditor fails to comply with  
7 the filing requirements of the bill, a borrower may bring an action,  
8 including a counterclaim, against the creditor to recover or obtain  
9 certain relief and damages.

10       The bill also provides that a borrower or cosigner who suffers  
11 damage as a result of a violation may bring an action in a court of  
12 competent jurisdiction to recover certain relief and damages.