

ASSEMBLY, No. 4395

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JULY 16, 2020

Sponsored by:

Assemblyman WILLIAM F. MOEN, JR.

District 5 (Camden and Gloucester)

Assemblywoman MILA M. JASEY

District 27 (Essex and Morris)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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 designated
13 in the contract or instrument with respect to that obligation, including
14 an obligation under a private education loan extended to consolidate
15 a borrower’s pre-existing private education loans; and

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

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

21 “Creditor” means:

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

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

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

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

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

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

44 “Private education lender” or “lender” means any person engaged
45 in the business of securing, making, or extending private education
46 loans, or any holder of a private education loan. “Private education
47 lender” shall not include the following persons, only to the extent that
48 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 or
4 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 one year or less, even if the
21 credit is payable in more than four installments.

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 a
34 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 that
42 the student attends; and

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

1 “Student financing company” shall not include the following
2 persons, only to the extent that State regulation is preempted by
3 federal law:

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

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

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

11 “Total and permanent disability” is the condition of an individual
12 who:

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

16 (2) is unable to engage in any substantial gainful activity by
17 reason of any medically determinable physical or mental impairment
18 that can be expected to result in death, has lasted for a continuous
19 period of not less than 12 months, or can be expected to last for a
20 continuous period of not less than 12 months.

21

22 2. a. No person shall extend student financing or a private
23 education loan to a resident of this State without first registering with
24 the Commissioner of Banking and Insurance as provided in this
25 section.

26 b. A student financing company shall:

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

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

32 (a) a list of all schools at which the student financing company or
33 lender has provided loans to a borrower residing in this State;

34 (b) the volume of loans made annually to borrowers residing in
35 this State;

36 (c) the volume of loans made annually at each school identified
37 under subparagraph (a) of this paragraph;

38 (d) the default rate for borrowers obtaining loans from the student
39 financing company or lender;

40 (e) a copy of each model promissory note, agreement, contract or
41 other instrument used by the student financing company during the
42 previous year to substantiate that a private education loan has been
43 extended to a borrower or that a borrower owes a debt to the student
44 financing company; and

45 (f) the name and address of the student financing company and
46 any officer, director, partner or owner of a controlling interest of the
47 student financing company.

1 c. The commissioner shall create a publicly accessible website
2 that includes the following information about private education
3 lenders registered in this State:

4 (1) the name, address, telephone number and website for all
5 registered private education lenders;

6 (2) a summary of the information required under subparagraphs
7 (a) through (d) of paragraph (2) of subsection b. of this section; and

8 (3) copies of all model promissory notes, agreements, contracts,
9 or other instruments provided to the commissioner under
10 subparagraph (e) of paragraph (2) of subsection b. of this section.

11 d. The commissioner may impose a civil penalty not exceeding
12 \$25,000 on any person for a violation of this section. Each violation
13 of this section, including any order, rule or regulation made or issued
14 pursuant to the act, shall constitute a separate offense. Additionally,
15 each violation which constitutes a knowing violation shall be a crime
16 of the third degree.

17 e. The commissioner may order that any person who has been
18 found to have knowingly violated any provision of this section, or of
19 the rules and regulations issued pursuant to this section, and has
20 thereby caused financial harm to consumers, be barred for a term not
21 exceeding 10 years from acting as a private education lender, or a
22 stockholder, or an officer, director, partner or other owner, or an
23 employee of a private education lender. The commissioner may
24 order the rescission of a loan made by a person who fails to register
25 pursuant to this section. A violation of an order shall be a crime of
26 the third degree.

27
28 3. a. Prior to the extension of a private education loan that
29 requires a cosigner, a private education lender shall deliver the
30 following information to the cosigner:

31 (1) how the private education loan obligation shall appear on the
32 cosigner's credit;

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

37 (3) eligibility for release of the cosigner's obligation on the
38 private education loan, including the number of on-time payments
39 and any other criteria required to approve the release of cosigner from
40 the loan obligation.

41 b. For any private education loan that obligates a cosigner, a
42 lender shall provide the borrower and the cosigner an annual written
43 notice containing information about cosigner release, including the
44 administrative, non-judgmental criteria the lender requires to
45 approve the release of the cosigner from the loan obligation and the
46 process for applying for cosigner release.

47 c. If the borrower has met the applicable payment requirement
48 to be eligible for cosigner release, the lender shall send the borrower

1 and the cosigner a written notification by mail and by electronic mail,
2 where a borrower or cosigner has elected to receive electronic
3 communications from the lender, informing the borrower and
4 cosigner that the payments requirement to be eligible for cosigner
5 release have been met. The notification shall also include
6 information about any additional criteria to qualify for cosigner
7 release, and the procedure to apply for cosigner release.

8 d. A lender shall provide written notice to a borrower who
9 applies for cosigner release, but whose application is incomplete.
10 The written notice shall include a description of the information
11 needed to consider the application complete and the date by which
12 the applicant shall furnish the missing information.

13 e. Within 30 days after a borrower submits a completed
14 application for cosigner release, the lender shall send the borrower
15 and cosigner a written notice that informs the borrower and cosigner
16 whether the cosigner release application has been approved or
17 denied. If the lender denies a request for cosigner release, the
18 borrower may request any documents or information used in the
19 determination, including, but not limited to, the credit score threshold
20 used by the lender, the borrower's consumer report, the borrower's
21 credit score, and any other documents specific to the borrower. The
22 lender shall also provide any adverse action notices required under
23 applicable federal law if the denial is based in whole or in part on any
24 information contained in a consumer report.

25

26 4. a. In response to a written or oral request for cosigner release,
27 a lender shall provide the information described in subsection b. of
28 section 3 of this act.

29 b. A lender shall not impose any restriction that permanently
30 bars a borrower from qualifying for cosigner release, including
31 restricting the number of times a borrower may apply for cosigner
32 release.

33 c. A lender shall not impose any negative consequences on any
34 borrower or cosigner during the 60 days following the issuance of the
35 notice required pursuant to subsection d. of section 3 of this act, or
36 until the lender makes a final determination about a borrower's
37 cosigner release application. For the purpose of this subsection,
38 "negative consequences" includes, but is not limited to, the
39 imposition of additional eligibility criteria, negative credit reporting,
40 lost eligibility for cosigner release, late fees, interest capitalization,
41 or other financial injury.

42 d. A lender shall not require greater than 12 consecutive, on-time
43 payments as criteria for cosigner release. Any borrower who has paid
44 the equivalent of 12 months of principal and interest payments within
45 any 12-month period shall be considered to have satisfied the
46 consecutive, on-time payment requirement, even if the borrower has
47 not made payments monthly during the 12-month period.

1 e. If a borrower or cosigner requests a change in terms that
2 restarts the count of consecutive, on-time payments required for
3 cosigner release, the lender shall notify the borrower and cosigner in
4 writing of the impact of the change and provide the borrower or
5 cosigner the right to withdraw or reverse the request to avoid that
6 impact.

7 f. A borrower shall have the right to request an appeal of a
8 lender's determination to deny a request for cosigner release, and the
9 lender shall permit the borrower to submit additional documentation
10 evidencing the borrower's ability, willingness, and stability to meet
11 the payment obligations. The borrower may request review of the
12 cosigner release determination by another employee.

13 g. A lender shall establish and maintain a comprehensive record
14 management system reasonably designed to ensure the accuracy,
15 integrity, and completeness of data and other information about
16 cosigner release applications and to ensure compliance with
17 applicable state and federal laws, including but not limited to the
18 "Equal Credit Opportunity Act," 15 U.S.C. s.1691 et seq., and the
19 "Fair Credit Reporting Act," 15 U.S.C. s.1681 et seq. This system
20 shall include the number of cosigner release applications received,
21 the approval and denial rate, and the primary reasons for any denial.

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

25 (2) If a lender provides electronic access to documents and
26 records for a borrower, it shall provide equivalent electronic access
27 to the cosigner.

28

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

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

39 b. (1) In the event of the death of a cosigner, the lender shall not
40 attempt to collect against the cosigner's estate, other than for
41 payment default.

42 (2) Upon receiving notification of the death or bankruptcy of a
43 cosigner, when the loan is not more than 60 days delinquent at the
44 time of the notification, the lender shall not change any terms or
45 benefits under the promissory note, repayment schedule, repayment
46 terms, or monthly payment amount or any other provision associated
47 with the loan.

1 c. A lender shall not place any loan or account into default or
2 accelerate a loan while a borrower is seeking a loan modification or
3 enrollment in a flexible repayment plan, except that a lender may
4 place a loan or account into default or accelerate a loan for payment
5 default 90 days following the borrower's default.

6
7 6. a. A private education lender, when notified of the total and
8 permanent disability of a borrower or cosigner, shall release any
9 cosigner from the obligations of the cosigner under a private
10 education loan. The lender shall not attempt to collect a payment
11 from a cosigner following a notification of total and permanent
12 disability of the cosigner or borrower.

13 b. A lender shall notify a borrower and cosigner for a private
14 education loan if either a cosigner or borrower is released from the
15 obligations of the private education loan under this section, within 30
16 days of the release.

17 c. Any lender that extends a private education loan shall provide
18 the borrower an option to designate an individual to have the legal
19 authority to act on behalf of the borrower with respect to the private
20 education loan in the event of the total and permanent disability of
21 the borrower.

22 d. (1) In the event a cosigner is released from the obligations of
23 a private education loan pursuant to subsection a. of this section, the
24 lender shall not require the borrower to obtain another cosigner on
25 the loan obligation.

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

29 e. A lender shall, when notified of the total and permanent
30 disability of a borrower, discharge the liability of the borrower and
31 cosigner on the loan.

32 f. After receiving a notification described in subsection e. of this
33 section, the lender shall not:

34 (1) attempt to collect on the outstanding liability of the borrower
35 or cosigner; or

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

38
39 7. a. Prior to offering a person a private education loan that is
40 being used to refinance an existing education loan, a private
41 education lender shall provide the person a disclosure that benefits
42 and protections applicable to the existing loan may be lost due to the
43 refinancing.

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

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

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

7 (2) establish policies and procedures and implement them
8 consistently in order to facilitate evaluation of private education loan
9 flexible repayment option requests, including providing accurate
10 information regarding any private education loan alternative
11 repayment options that may be available to the borrower through the
12 promissory note or that may have been marketed to the borrower
13 through marketing materials; and

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

17

18 8. a. No private education lender shall:

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

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

22 (3) make a private education loan upon security of any
23 assignment of or order for the payment of any salary, wages,
24 commissions or other compensation for services earned, or to be
25 earned. No assignment or order shall be taken by a lender in
26 connection with a private education loan, or for the enforcement or
27 repayment thereof, and any assignment or order taken or given to
28 secure any loan made by any lender under this act shall be void; or

29 (4) make, advertise, print, display, publish, distribute,
30 electronically transmit, telecast or broadcast, in any manner, any
31 statement or representation which is false, misleading or deceptive.

32 b. A private education lender shall establish and maintain
33 records and permit the department to access and copy any records
34 required to be maintained pursuant to this act. Loan files, including
35 any records specified for retention by regulation adopted by the
36 commissioner, shall be retained for not less than six years after the
37 termination of the loan account.

38

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

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

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

47 (3) the original creditor's account number used to identify the
48 private education loan debt at the time of default, if the original

- 1 creditor used an account number to identify the private education
- 2 loan debt at the time of default;
- 3 (4) the amount due at the time of default;
- 4 (5) a schedule of all transactions credited or debited to the student
- 5 loan account;
- 6 (6) a copy of all pages of the contract, application or other
- 7 documents evidencing the private education loan borrower's liability
- 8 for the private education loan, stating all terms and conditions
- 9 applicable to the private education loan; and
- 10 (7) a clear and conspicuous statement disclosing that the
- 11 borrower has a right to request all information possessed by the
- 12 creditor related to the defaulted private education loan debt,
- 13 including, but not limited to the required information described in
- 14 paragraph (3) of this subsection.
- 15 b. A creditor shall not collect or attempt to collect a private
- 16 education loan debt unless the creditor possesses:
- 17 (1) the name of the owner of the private education loan;
- 18 (2) the original creditor's name at the time of default, if
- 19 applicable;
- 20 (3) the original creditor's account number used to identify the
- 21 private education loan at the time of default, if the original creditor
- 22 used an account number to identify the private education loan at the
- 23 time of default;
- 24 (4) the amount due at default;
- 25 (5) a schedule of all transactions credited or debited to the student
- 26 loan account;
- 27 (6) an itemization of interest and fees, if any, claimed to be owed
- 28 and whether those were imposed by the original creditor or any
- 29 subsequent owners of the private education loan;
- 30 (7) the date that the private education loan was incurred;
- 31 (8) a billing statement or other account record indicating the date
- 32 of the first partial payment or the first day that a payment was missed,
- 33 whichever is earlier;
- 34 (9) a billing statement or other account record indicating the date
- 35 of the last payment made by the borrower, if applicable;
- 36 (10) any payments, settlement, or financial remuneration of any
- 37 kind paid to the creditor by a guarantor, co-signer, or surety, and the
- 38 amount of payment received;
- 39 (11) a copy of the self-certification form and any other needs
- 40 analysis conducted by the original creditor prior to origination of the
- 41 loan;
- 42 (12) the names of all persons or entities that owned the private
- 43 education loan after the time of default, if applicable, and the date of
- 44 each sale or transfer;
- 45 (13) a log of all collection attempts made in the last 12 months
- 46 including date and time of all calls and letters;

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

4 (15) a copy of all pages of the contract, application or other
5 documents evidencing the private education loan borrower's liability
6 for the private education loan, stating all terms and conditions
7 applicable to the private education loan; and

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

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

28
29 10. a. Upon a payment default on a private education loan by a
30 borrower, and before a creditor may accelerate the maturity of the
31 loan or commence a legal action against the borrower, the lender shall
32 provide to the borrower a notice of intention to accelerate the loan.
33 The creditor shall provide the notice at least 30 days, but not more
34 than 180 days, in advance of the action, and shall provide a copy of
35 the notice to the department at the same time it is provided to the
36 borrower.

37 b. Notice of intention to take action as specified in subsection a.
38 of this section shall be in writing, provided to the Department of
39 Banking and Insurance, and sent to the borrower by registered or
40 certified mail, return receipt requested, at the borrower's last known
41 address. The notice shall effectuate on the date the notice is delivered
42 in person or mailed to the party.

43 c. A notice provided pursuant to this section shall contain the
44 information required pursuant to subsection b. of section 9 of this act.

45
46 11. a. An action to enter a judgment against a borrower shall be
47 commenced within six years of the date the borrower failed to make
48 a payment.

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

4 (1) a copy of the notice of intention provided pursuant to section
5 10 of this act, including the information provided to the borrower
6 pursuant to subsection c. of that section;

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

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

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

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

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

15 (7) a statement as to whether the debt is dischargeable in
16 bankruptcy.

17 Failure to attach the information required by this subsection shall
18 be an affirmative defense.

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

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

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

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

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

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

32 (5) punitive damages;

33 (6) injunctive relief;

34 (7) correction of the borrower's credit report;

35 (8) attorney's fees and court costs; and

36 (9) any other relief that the court deems proper.

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

43

44 12. A borrower or cosigner who suffers damage as a result of a
45 violation of this act may bring an action in a court of competent
46 jurisdiction to recover:

47 a. Actual damages, but in no case shall the total award of
48 damages action be less than \$500;

- 1 b. An order enjoining the methods, acts, or practices;
- 2 c. Restitution of property;
- 3 d. Punitive damages;
- 4 e. Attorney's fees; and
- 5 f. Any other relief that the court deems proper.

6

7 13. This act shall take effect on the 180th day next following
8 enactment.

9

10

11

STATEMENT

12

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

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

20 The bill provides that a "private education loan" is an extension
21 of credit that:

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

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

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

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

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

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

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

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

9 The bill provides that the commissioner may impose a civil
10 penalty not exceeding \$25,000 on any person for a violation of the
11 registration provisions of the bill. Each violation, including any
12 order, rule or regulation made or issued pursuant to the bill,
13 constitutes a separate offense. Additionally, each violation which
14 constitutes a knowing violation is a crime of the third degree.

15 The bill requires private education lenders to deliver certain
16 information to a cosigner prior to the extension of a private education
17 loan that requires a cosigner. The lender must inform the cosigner:

18 (1) how the private education loan obligation will appear on the
19 cosigner's credit;

20 (2) how the cosigner will be notified if the private education loan
21 becomes delinquent, including how the cosigner can cure the
22 delinquency in order to avoid negative credit furnishing and loss of
23 cosigner release eligibility; and

24 (3) eligibility for release of the cosigner's obligation on the
25 private education loan, including the number of on-time payments
26 and any other criteria required to approve the release of cosigner from
27 the loan obligation.

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

34 Under the bill, if the borrower has met the applicable payment
35 requirement to be eligible for cosigner release, the lender must send
36 the borrower and the cosigner a written notification by mail and by
37 electronic mail, where a borrower or cosigner has elected to receive
38 electronic communications from the lender, informing the borrower
39 and cosigner that the payments requirement to be eligible for cosigner
40 release have been met. The notification is also required to include
41 information about any additional criteria to qualify for cosigner
42 release, and the procedure to apply for cosigner release.

43 The bill requires a lender to provide written notice to a borrower
44 who applies for cosigner release, but whose application is
45 incomplete. The written notice must include a description of the
46 information needed to consider the application complete and the date
47 by which the applicant must furnish the missing information.

1 The bill provides that, within 30 days after a borrower submits a
2 completed application for cosigner release, the lender is required to
3 send the borrower and cosigner a written notice that informs the
4 borrower and cosigner whether the cosigner release application has
5 been approved or denied.

6 The bill prohibits a lender from imposing any restriction that
7 permanently bars a borrower from qualifying for cosigner release,
8 including restricting the number of times a borrower may apply for
9 cosigner release.

10 The bill prohibits a lender from requiring greater than 12
11 consecutive, on-time payments as criteria for cosigner release. Any
12 borrower who has paid the equivalent of 12 months of principal and
13 interest payments within any 12-month period must be considered to
14 have satisfied the consecutive, on-time payment requirement, even if
15 the borrower has not made payments monthly during the 12-month
16 period.

17 Under the bill, if a borrower or cosigner requests a change in terms
18 that restarts the count of consecutive, on-time payments required for
19 cosigner release, the lender must notify the borrower and cosigner in
20 writing of the impact of the change and provide the borrower or
21 cosigner the right to withdraw or reverse the request to avoid that
22 impact.

23 The bill provides that a borrower has the right to request an appeal
24 of a lender's determination to deny a request for cosigner release, and
25 the lender is required to permit the borrower to submit additional
26 documentation evidencing the borrower's ability, willingness, and
27 stability to meet the payment obligations. The borrower may request
28 review of the cosigner release determination by another employee.

29 The bill requires lenders to establish and maintain a
30 comprehensive record management system reasonably designed to
31 ensure the accuracy, integrity, and completeness of data and other
32 information about cosigner release applications and to ensure
33 compliance with applicable state and federal laws.

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

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

43 Upon receiving notification of the death or bankruptcy of a
44 cosigner, when the loan is not more than 60 days delinquent at the
45 time of the notification, the lender may not change any terms or
46 benefits under the promissory note, repayment schedule, repayment
47 terms, or monthly payment amount or any other provision associated
48 with the loan.

1 The bill requires private education lenders, when notified of the
2 total and permanent disability of a borrower or cosigner, to release
3 any cosigner from the obligations of the cosigner under a private
4 education loan. The lender may not attempt to collect a payment
5 from a cosigner following a notification of total and permanent
6 disability of the cosigner or borrower.

7 The bill requires lenders to notify borrowers and cosigners if a
8 cosigner or borrower is released from the obligations of the private
9 education loan within 30 days of the release.

10 The bill requires lenders that extend private education loans to
11 provide the borrower the option to designate an individual to have
12 the legal authority to act on behalf of the borrower with respect to the
13 private education loan in the event of the total and permanent
14 disability of the borrower.

15 In the event a cosigner is released from the obligations of a private
16 education loan, a lender may not require the borrower to obtain
17 another cosigner on the loan obligation.

18 The bill provides that lenders may not declare a default or
19 accelerate the debt against the borrower on the sole basis of the
20 release of the cosigner from the loan obligation.

21 The bill requires lenders, when notified of the total and permanent
22 disability of a borrower, to discharge the liability of the borrower and
23 cosigner on the loan.

24 After receiving a notification notified of the total and permanent
25 disability of a borrower, the lender may not attempt to collect on the
26 outstanding liability of the borrower or cosigner or monitor the
27 disability status of the borrower at any point after the date of
28 discharge.

29 The bill requires private education lenders to deliver a statement
30 that benefits and protections applicable to an existing loan may be
31 lost due to refinancing before offering a person a private education
32 loan that is being used to refinance an existing education loan.

33 This information must be provided on a one-page information
34 sheet in a 12-point font and shall be written in simple, clear,
35 understandable and easily readable language.

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

40 (1) provide on their website a description of any alternative
41 repayment option offered by the lender for private education loans;

42 (2) establish policies and procedures and implement them
43 consistently in order to facilitate evaluation of private education loan
44 flexible repayment option requests, including providing accurate
45 information regarding any private education loan alternative
46 repayment options that may be available to a borrower through the
47 promissory note or that may have been marketed to a borrower
48 through marketing materials; and

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

4 The bill provides that a private education lender may not:

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

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

8 (3) make a private education loan upon security of any
9 assignment of or order for the payment of any salary, wages,
10 commissions or other compensation for services earned, or to be
11 earned; or

12 (4) make, advertise, print, display, publish, distribute,
13 electronically transmit, telecast or broadcast, in any manner, any
14 statement or representation which is false, misleading or deceptive.

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

21 The bill provides that, in addition to any other information
22 required under applicable federal or State law, a debt collector
23 attempting to collect a private education loan must provide in the first
24 debt collection communication with the borrower and at any other
25 time the borrower requests this documentation:

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

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

29 (3) the original creditor's account number used to identify the
30 private education loan debt at the time of default, if the original
31 creditor used an account number to identify the private education
32 loan debt at the time of default;

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

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

36 (6) a copy of all pages of the contract, application or other
37 documents evidencing the private education loan borrower's liability
38 for the private education loan, stating all terms and conditions
39 applicable to the private education loan; and

40 (7) a clear and conspicuous statement disclosing that the
41 borrower has a right to request all information possessed by the
42 creditor related to the defaulted private education loan debt.

43 The bill prohibits creditors from collecting or attempting to collect
44 a private education loan debt unless the creditor possesses:

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

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

1 (3) the original creditor's account number used to identify the
2 private education loan at the time of default, if the original creditor
3 used an account number to identify the private education loan at the
4 time of default;

5 (4) the amount due at default;

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

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

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

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

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

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

20 (11) a copy of the self-certification form and any other needs
21 analysis conducted by the original creditor prior to origination of the
22 loan;

23 (12) the names of all persons or entities that owned the private
24 education loan after the time of default, if applicable, and the date of
25 each sale or transfer;

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

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

31 (15) a copy of all pages of the contract, application or other
32 documents evidencing the private education loan borrower's liability
33 for the private education loan, stating all terms and conditions
34 applicable to the private education loan; and

35 (16) documentation establishing that the creditor is the owner of
36 the specific individual private education loan at issue.

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

45 Notice of intention to take action is required to be in writing,
46 provided to the Department of Banking and Insurance, and sent to the
47 borrower by registered or certified mail, return receipt requested, at
48 the borrower's last known address. The notice is deemed to be

1 effectuated on the date the notice is delivered in person or mailed to
2 the party.

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

6 The bill requires a creditor or lender seeking to enter a default
7 judgment against a borrower to attach the following documentation
8 and information to a complaint, filed in a court of competent
9 jurisdiction:

10 (1) a copy of the notice of intention provided pursuant to the bill,
11 including the information provided to the borrower pursuant to that
12 notice;

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

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

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

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

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

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

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

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