SENATE, No. 1974



STATE OF NEW JERSEY

220th LEGISLATURE



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.



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

 Be It Enacted by the Senate and General Assembly of the State of New Jersey:

 1. As used in this act:

 “Commissioner” means the Commissioner of Banking and Insurance.

 “Cosigner” means:

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

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

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

 “Creditor” means:

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

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

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

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

 “Department” means the Department of Banking and Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

 “Student financing” means:

 (1) an extension of credit that:

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

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

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

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

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

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

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

 “Student financing company” means any person engaged in the business of securing, making, or extending credit to a consumer for postsecondary education expenses, or any holder of a debt incurred by a consumer to finance postsecondary education expenses. “Student financing company” shall not include the following persons, only to the extent that State regulation is preempted by federal law:

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

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

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

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

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

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

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

 An individual shall not be considered “totally and permanently disabled” under this act on the basis of a condition that existed at the time the individual applied for the loan, unless the individual’s condition has deteriorated later so as to render the individual totally and permanently disabled.

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

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

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

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

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

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

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

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

 (e) the eligibility criteria to receive the lowest advertised starting interest rate and the percentage of applicants who receive the lowest advertised starting interest rate; and

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

 c. The commissioner shall post on the department’s Internet website the following information about private education lenders registered in this State:

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

 (2) a summary of the information required under subparagraphs (a) through (e) of paragraph (2) of subsection b. of this section

 d. A creditor, lender, or student financing company shall post on its website a copy of each model promissory note, agreement, contract or other instrument used by the creditor, lender, or student financing company during the previous year to substantiate that a private education loan has been extended to a borrower or that a borrower owes a debt to the creditor, lender, or student financing company.

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

 f. The commissioner may order that any person who has been found to have knowingly violated any provision of this section, or of the rules and regulations issued pursuant to this section, be barred for a term not exceeding 10 years from acting as a private education lender, or a stockholder, or an officer, director, partner or other owner, or an employee of a private education lender. The commissioner may order the rescission of a loan made by a person who fails to register pursuant to this section. A violation of an order shall be a crime of the third degree.

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

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

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

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

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

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

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

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

 4. a. If a private education loan provides a cosigner release option, in response to a written or oral request for cosigner release, a lender shall provide the information described in subsection b. of section 3 of this act.

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

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

 d. For any private education loan executed after the effective date of this act, a lender shall not require greater than 12 consecutive, on-time payments of principal and interest as the initialcriteria for the borrower to submit an application for cosigner release. e. If a borrower or cosigner requests a change in terms that restarts the count of consecutive, on-time payments required for cosigner release, the lender shall notify the borrower and cosigner in writing, by mail, or by electronic mail, if a borrower or cosigner has elected to receive electronic communications from the lender, of the impact of the change and provide the borrower or cosigner the right to withdraw or reverse the request to avoid that impact.

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

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

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

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

 5. a. (1) A private education loan executed after the effective date of this act shall not include 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. A lender shall not place any loan or account into default or accelerate a loan for any reason, other than for payment default.

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

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

 (2) 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 shall not change any terms or benefits under the promissory note, repayment schedule, repayment terms, or monthly payment amount or any other provision associated with the loan.

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

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

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

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

 d. Any lender that extends a private education loan shall provide the borrower an 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.

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

 (2) A lender shall 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.

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

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

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

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

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

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

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

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

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

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

 8. a. No private education lender shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

 (4) the amount due at default;

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

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

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

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

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

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

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

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

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

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

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

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

 10. a. Upon 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, the lender shall provide to the borrower a notice of intention to accelerate the loan. The creditor shall provide the notice at least 30 days, but not more than 180 days, in advance of the action, and shall provide a copy of the notice to the department at the same time it is provided to the borrower.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

 (2) a judgment in favor of the borrower;

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

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

 (5) injunctive relief;

 (6) correction of the borrower’s credit report;

 (7) attorney’s fees and court costs; and

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

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

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

 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.

 13. The Department of Banking and Insurance shall promulgate rules and regulations pursuant to the “Administrative Procedure Act,” P.L. 1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the provisions of this act.

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

STATEMENT

 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.