

SENATE, No. 2612

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED FEBRUARY 8, 2024

Sponsored by:
Senator JOSEPH P. CRYAN
District 20 (Union)

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
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

1 education lender” shall not include the following persons, only to
2 the extent that State regulation is preempted by 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 “Private education loan” means an extension of credit that:

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

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

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

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

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

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

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

27 “Student financing” means:

28 (1) an extension of credit that:

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

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

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

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

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

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

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

47 “Student financing company” means any person engaged in the
48 business of securing, making, or extending credit to a consumer for

1 postsecondary education expenses, or any holder of a debt incurred
2 by a consumer to finance postsecondary education expenses.
3 “Student financing company” shall not include the following
4 persons, only to the extent that State regulation is preempted by
5 federal law:

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

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

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

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

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

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

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

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

35

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

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

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

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

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

- 1 3. a. Prior to the extension of a private education loan that
2 requires a cosigner, a private education lender shall deliver the
3 following information to the cosigner:
- 4 (1) how the private education loan obligation shall appear on the
5 cosigner's credit;
- 6 (2) how the cosigner shall be notified if the private education
7 loan becomes delinquent, including how the cosigner can cure the
8 delinquency in order to avoid negative credit furnishing and loss of
9 cosigner release eligibility; and
- 10 (3) for a loan that provides a cosigner release option, the
11 conditions for eligibility for release of the cosigner's obligation on
12 the private education loan, including the number of on-time
13 payments and any other criteria required to approve the release of
14 cosigner from the loan obligation.
- 15 b. For any private education loan that obligates a cosigner and
16 provides for cosigner release, a lender shall provide the borrower
17 and the cosigner an annual written or electronic notice containing
18 clear and conspicuous information about cosigner release, including
19 the administrative, non-judgmental criteria the lender requires to
20 approve the release of the cosigner from the loan obligation and the
21 process for applying for cosigner release. Such criteria may include
22 minimum income or credit, or both income and credit, requirements
23 that the lender requires the borrower to satisfy for cosigner release.
- 24 c. If the borrower has met the applicable payment requirement
25 to be eligible for cosigner release, the lender shall send the
26 borrower and the cosigner a written notification by mail or by
27 electronic mail, where a borrower or cosigner has elected to receive
28 electronic communications from the lender, informing the borrower
29 and cosigner that the payment requirement to be eligible for
30 cosigner release has been met. The notification shall also include
31 information about any additional criteria to qualify for cosigner
32 release, and the procedure to apply for cosigner release.
- 33 d. A lender shall provide written notice to a borrower who
34 applies for cosigner release, but whose application is incomplete.
35 The written notice shall include a description of the information
36 needed to consider the application complete and the date by which
37 the applicant shall furnish the missing information.
- 38 e. Within 30 days after a borrower submits a completed
39 application for cosigner release, the lender shall send the borrower
40 and cosigner a written notice that informs the borrower and
41 cosigner whether the cosigner release application has been approved
42 or denied. If the lender denies a request for cosigner release, the
43 borrower may request any documents or information used in the
44 determination, including, but not limited to, the credit score
45 threshold used by the lender and any other documents specific to
46 the borrower, in the possession of the lender or the lender's third-
47 party contractors. The lender shall also provide any adverse action
48 notices required under applicable federal law if the denial is based

1 in whole or in part on any information contained in a consumer
2 report.

3

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

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

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

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

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

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

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

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

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

7
8 5. a. (1) A private education loan executed after the effective
9 date of this act shall not include a provision that permits the private
10 educational lender to accelerate, in whole or in part, payments on
11 the private education loan, except in cases of payment default. A
12 lender shall not place any loan or account into default or accelerate
13 a loan for any reason, other than for payment default.

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

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

23 (2) Upon receiving notification of the death or bankruptcy of a
24 cosigner, when the loan is not more than 60 days delinquent at the
25 time of the notification, the lender shall not change any terms or
26 benefits under the promissory note, repayment schedule, repayment
27 terms, or monthly payment amount or any other provision
28 associated with the loan.

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

34
35 6. a. A private education lender, upon determination of the total
36 and permanent disability of a borrower, shall release any cosigner
37 from the obligations of the cosigner under a private education loan.
38 The lender shall not attempt to collect a payment from any cosigner
39 following a notification of total and permanent disability of the
40 borrower.

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

45 c. A lender shall notify a borrower and cosigner for a private
46 education loan if either a cosigner or borrower is released from the
47 obligations of the private education loan under this section, within
48 30 days of the release.

1 d. Any lender that extends a private education loan shall
2 provide the borrower an option to designate an individual to have
3 the legal authority to act on behalf of the borrower with respect to
4 the private education loan in the event of the total and permanent
5 disability of the borrower.

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

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

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

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

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

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

22

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

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

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

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

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

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

1 8. a. No private education lender shall:

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

4 (2) engage in any unfair, deceptive, or abusive act or practice;
5 or make, advertise, print, display, publish, distribute, electronically
6 transmit, telecast or broadcast, in any manner, any statement or
7 representation which is false, misleading or deceptive.

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

12

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

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

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

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

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

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

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

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

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

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

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

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

46 (4) the amount due at default;

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

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

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

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

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

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

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

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

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

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

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

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

46
47 10. a. Upon a payment default on a private education loan by a
48 borrower, and before a creditor may accelerate the maturity of the

1 loan or commence a legal action against the borrower, the lender
2 shall provide to the borrower a notice of intention to accelerate the
3 loan. The creditor shall provide the notice at least 30 days, but not
4 more than 180 days, in advance of the action, and shall provide a
5 copy of the notice to the department at the same time it is provided
6 to the borrower.

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

10
11 11. a. An action to enter a judgment against a borrower shall be
12 commenced within six years of the date the borrower failed to make
13 a payment.

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

17 (1) a copy of the notice of intention provided pursuant to section
18 10 of this act, including the information a lender is required to
19 retain pursuant to subsection b. of section 9 of this act;

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (5) injunctive relief;

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

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

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

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

7
8 12. A borrower or cosigner who suffers damage as a result of a
9 violation of this act may bring an action in a court of competent
10 jurisdiction to recover:

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

13 b. An order enjoining the methods, acts, or practices;

14 c. Restitution of property;

15 d. Attorney's fees; and

16 e. Any other relief that the court deems proper.

17
18 13. The Department of Banking and Insurance shall promulgate
19 rules and regulations pursuant to the "Administrative Procedure
20 Act," P.L. 1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate
21 the provisions of this act.

22
23 14. This act shall take effect on the 180th day next following
24 enactment.

25 26 27 STATEMENT

28
29 The bill prohibits a creditor, lender, or student financing company
30 from extending student financing or a private education loan to a New
31 Jersey resident without first registering with the Commissioner of
32 Banking and Insurance and with the Nationwide Multistate Licensing
33 System and Registry. Creditors, lenders, and student financing
34 companies are required to provide the commissioner, at the time of
35 registration and not less than once per year thereafter, certain
36 information about the entities and the student loans that they provide.
37 The commissioner is required to post on the department's website
38 information about private education lenders registered in the State.
39 The bill also requires creditors, lenders, and student financing
40 companies to post on their websites a copy of each model promissory
41 note, agreement, contract or other instrument used by the creditor,
42 lender, or student financing company to substantiate a private
43 education loan. The bill provides that the commissioner may impose a
44 civil penalty not exceeding \$25,000 on any person for a violation of
45 the registration provisions of the bill. Each violation, which
46 constitutes a knowing violation, is a crime of the third degree.

47 The bill requires private education lenders to deliver certain
48 information to a cosigner related to impacts on the cosigner in certain

1 circumstances, prior to the extension of a private education loan that
2 requires a cosigner. For any private education loan that obligates a
3 cosigner and provides for cosigner release, a lender is required to
4 provide the borrower and the cosigner an annual written or electronic
5 notice containing clear and conspicuous information about cosigner
6 release. Under the bill, if the borrower has met the applicable payment
7 requirement to be eligible for cosigner release, the lender must send
8 the borrower and the cosigner a notification informing them that the
9 payments requirement to be eligible for cosigner release has been met.

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

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

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

44 Under the bill, a lender, upon determination of the total and
45 permanent disability of a borrower, is required to release any cosigner
46 from his obligations under a private education loan. Upon
47 determination of the total and permanent disability of a cosigner, a
48 lender is required to release that individual cosigner from the

1 obligations of the cosigner. The bill requires lenders to notify
2 borrowers and cosigners if a cosigner or borrower is released from the
3 obligations of the private education loan, within 30 days of the release.
4 The bill requires lenders that extend private education loans to provide
5 the borrower the option to designate an individual to have the legal
6 authority to act on behalf of the borrower with respect to the private
7 education loan in the event of the total and permanent disability of the
8 borrower. In the event a cosigner is released from the obligations of a
9 private education loan, a lender may not require the borrower to obtain
10 another cosigner on the loan obligation. The bill provides that lenders
11 may not declare a default or accelerate the debt against the borrower
12 on the sole basis of the release of the cosigner from the loan
13 obligation. The bill requires lenders, upon determination of the total
14 and permanent disability of a borrower, to discharge the liability of the
15 borrower and cosigner on the loan. After making the determination of
16 the total and permanent disability of a borrower, a lender may not
17 attempt to collect on the outstanding liability of the borrower or
18 cosigner or monitor the disability status of the borrower after the date
19 of discharge.

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

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

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

44 Following a payment default on a private education loan by a
45 borrower, and before a creditor may accelerate the maturity of the loan
46 or commence a legal action against the borrower, a lender is required
47 to provide to the borrower a notice of intention to accelerate the loan.
48 The creditor must provide the notice at least 30 days, but not more

1 than 180 days, in advance of the action, and must provide a copy of the
2 notice to the department at the same time it is provided to the
3 borrower.

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

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