

# STATE OF NEW YORK

5136

2021-2022 Regular Sessions

## IN SENATE

February 24, 2021

Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law and the civil practice law and rules, in relation to protecting private education loan borrowers and cosigners

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The general business law is amended by adding a new article  
2 42 to read as follows:

### ARTICLE 42

#### PRIVATE EDUCATION LOAN PROTECTIONS

##### Section 1100. Definitions.

1101. Applicability.

1102. Exempt organizations.

1103. Provisions applicable to cosigners.

1104. Prohibition on acceleration of payments on private education loans.

1105. Required communications.

1106. Required information to be provided by creditors and debt collectors.

1107. Enforcement.

1108. Rules and regulations.

1109. Penalties.

##### § 1100. Definitions. As used in this article:

1. "Private education loan" means 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. 1070 et seq.);

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

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 (c) does not include open-end credit or any loan that is secured by  
2 real property or a dwelling; and

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

5 (i) the term of the extension of credit is ninety days or less; or

6 (ii) an interest rate or finance charge will not be applied to the  
7 credit balance and the term of the extension of credit is one year or  
8 less, even if the credit is payable in more than four installments.

9 2. "Private education lender", except as exempted under this article,  
10 means:

11 (a) any person or entity engaged in the business of securing, making,  
12 or extending private education loans; or

13 (b) any holder of a private education loan.

14 3. "Borrower" or "private education loan borrower" means a person who  
15 has received or agreed to pay a private education loan for his or her  
16 own educational expenses.

17 4. "Cosigner" (a) means:

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

23 (ii) includes any person the signature of which is requested as condi-  
24 tion to grant credit or to forbear on collection;

25 (b) does not include a spouse of an individual described in subpara-  
26 graph (i) of paragraph (a) of this subdivision, the signature of whom is  
27 needed to perfect the security interest in a loan.

28 5. "Original creditor" means the private education lender identified  
29 in a promissory note, loan agreement, or loan contract entered into with  
30 a private education loan borrower or cosigner.

31 6. "Creditor" means:

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

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

38 (c) a person or entity that purchased a delinquent or defaulted  
39 private education loan debt for collection purposes, whether it collects  
40 the debt itself, hires a third party for collection, or hires an attor-  
41 ney for collection litigation.

42 7. "Debt collector" means any person who regularly collects or  
43 attempts to collect, directly or indirectly, consumer debts originally  
44 owed or due or asserted to be owed or due another. The term does not  
45 include any officer or employee of a creditor who, in the name of the  
46 creditor, collects debts for such creditor, but it does include any  
47 creditor who, in the process of collecting its own debts, uses any name  
48 other than its own which would indicate that a third person is collect-  
49 ing or attempting to collect such debts.

50 8. "Higher education expense" means any expense arising from higher  
51 education, as defined in section two of the education law, regardless of  
52 whether the higher education institution is accredited within New York  
53 state.

54 § 1101. Applicability. 1. Any person or entity that enters into a  
55 contract or subcontract with a private education lender or servicer to

1 perform the servicing of a private education loan must fulfill the obli-  
2 gations of the private education lender under this article.

3 2. Any private education lender as described in subdivision two of  
4 section eleven hundred of this article be jointly and severally liable  
5 for the actions of the entity or person in fulfilling the obligations of  
6 the private educational lender or servicer under this article.

7 § 1102. Exempt organizations. The following shall be exempt from the  
8 provisions of this article only to the extent that state regulation is  
9 preempted by federal law:

10 1. Any banking organization, foreign banking corporation, national  
11 bank, federal savings association, federal credit union, or any bank,  
12 trust company, savings bank, savings and loan association, or credit  
13 union organized under the laws of any other state; and

14 2. Any subsidiary of such entities set forth in subdivision one of  
15 this section.

16 § 1103. Provisions applicable to cosigners. 1. (a) Prior to the origi-  
17 nation of a private education loan, the private education lender shall  
18 provide to all cosigner applicants information about the rights and  
19 responsibilities of the cosigner of the loan, including:

20 (i) information about how the private education loan obligation will  
21 appear on the cosigner's credit;

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

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

30 (b) Lenders shall send borrowers and cosigners annual written notices  
31 containing information about cosigner release, including criteria the  
32 lender requires to approve the release of cosigner from the loan obli-  
33 gation and the process for applying for cosigner release.

34 (c) Once the borrower has met the applicable consecutive on-time  
35 payment requirement to be eligible for cosigner release, the lender  
36 shall send the borrower and cosigner a written notification by U.S. mail  
37 and by electronic mail, where a borrower has elected to receive elec-  
38 tronic communications from the lender, informing the borrower and cosig-  
39 ner that he or she has met the applicable consecutive, on-time payments  
40 requirement to be eligible for cosigner release. The notification shall  
41 also include information about any additional criteria to qualify for  
42 cosigner release, and the procedure to apply for cosigner release.

43 (d) Lenders shall provide written notice within fifteen days to any  
44 borrower who applies for cosigner release, but whose application is  
45 incomplete. The written notice must include a description of the infor-  
46 mation needed to consider the application complete and the date by which  
47 the applicant should furnish the missing information.

48 (e) After a borrower submits a complete application for cosigner  
49 release, within thirty days, the lender shall send the borrower and  
50 cosigner a written notice that informs the borrower and cosigner whether  
51 the cosigner release application has been approved or denied. If the  
52 lender denies a request for cosigner release, the lender shall inform  
53 the borrower of his or her right to request all documents and informa-  
54 tion used in the determination, including the credit score threshold  
55 used by the lender, the borrower's consumer report, the borrower's cred-  
56 it score, and any other documents specific to the borrower. The lender

1 must also provide any adverse action notices required under applicable  
2 federal law if the denial is based in whole or in part on any informa-  
3 tion contained in a consumer report.

4 2. (a) In response to any written or oral request for cosigner  
5 release, lenders shall send the information described in paragraph (b)  
6 of subdivision one of this section.

7 (b) Lenders shall not impose any restrictions that may permanently bar  
8 a borrower from qualifying for cosigner release, including restricting  
9 the number of times a borrower may apply for cosigner release.

10 (c) Lenders shall not impose any negative consequences on any borrower  
11 or cosigner during the sixty days following the issuance of the notice  
12 required under paragraph (d) of subdivision one of this section, or  
13 until the lender makes a final determination about a borrower's cosigner  
14 release application. For the purpose of this paragraph, "negative conse-  
15 quences" includes, but is not limited to, the imposition of additional  
16 eligibility criteria, negative credit reporting, lost eligibility for  
17 cosigner release, late fees, interest capitalization, or other financial  
18 injury.

19 (d) Lenders shall not require greater than twelve consecutive, on-time  
20 payments as criteria to apply for cosigner release. Any borrower who has  
21 paid the equivalent of twelve months of principal and interest payments  
22 within any twelve-month period will be considered to have satisfied the  
23 consecutive, on-time payment requirement, even if the borrower has not  
24 made payments monthly during the twelve-month period.

25 (e) If a borrower or cosigner requests a change that restarts the  
26 count of consecutive, on-time payments required for cosigner release,  
27 the lender shall notify the borrower and cosigner in writing within ten  
28 days of the impact of such an arrangement and provide the borrower or  
29 cosigner the right to withdraw or reverse the request to avoid such  
30 impact.

31 (f) The borrower has the right to request an appeal of a lender's  
32 determination to deny the cosigner release application within ninety  
33 days of receiving the lender's determination, and the lender shall  
34 permit such borrower to submit additional documentation evidencing that  
35 the borrower has the ability, willingness, and stability to handle his  
36 or her payment obligations. The borrower may request review of the  
37 cosigner release determination by another employee. The lender shall  
38 inform the borrower of this right in a clear and conspicuous manner on  
39 the notice denying the cosigner release application.

40 (g) A lender must establish and maintain a comprehensive record  
41 management system reasonably designed to ensure the accuracy, integrity,  
42 and completeness of data and other information about cosigner release  
43 applications. This system shall include the number of cosigner release  
44 applications received, the approval and denial rate, and the primary  
45 reasons for any denial.

46 (h) If a cosigner has a total and permanent disability, as determined  
47 by any federal agency, state agency, or physician or doctor of osteopa-  
48 thy legally authorized to practice in this state, the lender shall  
49 release the cosigner from the cosigner's obligation to repay the loan  
50 upon receiving a notification of the cosigner's total and permanent  
51 disability. The lender shall not require a new cosigner to be added to  
52 the loan after the original cosigner has been released from the loan.

53 3. (a) A lender shall provide a cosigner of a private education loan  
54 with access to all documents or records related to the cosigned private  
55 education loan that are available to the borrower;

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

4 (c) Upon receiving notice from the borrower or cosigner, the lender  
5 shall redact the contact information of the other party.

6 § 1104. Prohibition on acceleration of payments on private education  
7 loans. 1. Except as provided in subdivision two of this section, a  
8 private education loan executed after the effective date of this article  
9 may not include a provision that permits the private educational lender  
10 to accelerate, in whole or in part, payments on the private education  
11 loan.

12 2. A private education loan may include a provision that permits  
13 acceleration of the loan in cases of payment default.

14 3. A lender shall not place any loan or account into default or accel-  
15 erate a loan for any reason, other than for failure to pay.

16 4. (a) In the event of the death of a cosigner, a lender shall not  
17 attempt to collect against the cosigner's estate, other than for failure  
18 to pay.

19 (b) Upon receiving notification of the death or bankruptcy of a cosig-  
20 ner, when the loan is not more than sixty days delinquent at the time of  
21 the notification, a lender shall not change any terms or benefits under  
22 the promissory note, repayment schedule, repayment terms, or monthly  
23 payment amount or any other provision associated with the loan.

24 (c) A lender shall not place any loan or account into default or  
25 accelerate a loan for any reason, other than for failure to pay.

26 § 1105. Required communications. In addition to any other information  
27 required under applicable federal or state law, a debt collector shall  
28 provide in the first debt collection communication with the private  
29 education loan borrower or cosigner and at any other time the borrower  
30 or cosigner requests such documentation:

31 1. The name of the owner of the private education loan debt;

32 2. The original creditor's name at the time of sale of the loan, if  
33 applicable;

34 3. The original creditor's account number used to identify the private  
35 education loan debt at the time of sale, if the original creditor used  
36 an account number to identify the private education loan debt at the  
37 time of sale;

38 4. The amount due at the time of default or the amount due to bring  
39 the loan current if the loan is delinquent;

40 5. A schedule of all transactions credited or debited to the private  
41 education loan account;

42 6. A copy of all pages of the contract, application or other documents  
43 evidencing the private education loan borrower's or cosigner's liability  
44 for the private education loan, stating all terms and conditions appli-  
45 cable to the private education loan; and

46 7. A clear and conspicuous statement disclosing that the borrower or  
47 cosigner has a right to request all information possessed by the credi-  
48 tor related to the private education loan debt, including, but not  
49 limited to the required information described in section eleven hundred  
50 six of this article.

51 § 1106. Required information to be provided by creditors and debt  
52 collectors. A creditor may not collect or attempt to collect a private  
53 education loan debt unless the creditor or debt collector possesses the  
54 following:

55 1. The name of the owner of the private education loan;

1 2. The original creditor's name at the time of sale of the loan or  
2 default, if applicable;

3 3. The original creditor's account number used to identify the private  
4 education loan at the time of sale or default, if the original creditor  
5 used an account number to identify the private education loan at the  
6 time of sale or default;

7 4. The amount due at the time of sale, or at default, or, if the loan  
8 is delinquent, to bring the loan current;

9 5. A schedule of all transactions credited or debited to the private  
10 education loan account;

11 6. An itemization of interest and fees, if any, claimed to be owed and  
12 whether those were imposed by the original creditor or any subsequent  
13 owners of the private education loan;

14 7. The date that the private education loan was incurred;

15 8. A billing statement or other account record indicating the date of  
16 the first partial payment and/or the first day that a payment was  
17 missed, whichever is earlier;

18 9. A billing statement or other account record indicating the date of  
19 the last payment made by the borrower or cosigner, if applicable;

20 10. Any payments, settlement, or financial remuneration of any kind  
21 paid to the creditor by a guarantor, cosigner, or surety, and the amount  
22 of payment received;

23 11. A copy of the self-certification form and any other "needs analy-  
24 sis" conducted by the original creditor prior to origination of the  
25 loan;

26 12. The names of all persons or entities that owned the private educa-  
27 tion loan after it became delinquent or went into default, if applica-  
28 ble, and the date of each sale or transfer;

29 13. A log of all collection attempts made in the last twelve months  
30 including date and time of all calls and letters;

31 14. Copies of all settlement letters made in the last twelve months,  
32 or, in the alternative, a statement that the creditor has not attempted  
33 to settle or otherwise renegotiate the debt prior to suit;

34 15. Copies of all collection letters sent to the borrower and cosigner  
35 since inception of the loan;

36 16. Documentation establishing that the creditor is the owner of the  
37 specific individual private education loan at issue. If the private  
38 education loan was assigned more than once, the creditor must possess  
39 each assignment or other writing evidencing the transfer of ownership of  
40 the specific individual private education loan to establish an unbroken  
41 chain of ownership, beginning with the original creditor to the first  
42 subsequent creditor and each additional creditor. Each assignment or  
43 other writing evidencing transfer of ownership or the right to collect  
44 must contain the original creditor's account number (redacted for secu-  
45 rity purposes to show only the last four digits) of the private educa-  
46 tion loan purchased or otherwise assigned, the date of purchase and  
47 assignment, and must clearly show the borrower's, and if applicable,  
48 cosigner's correct name associated with the original account number. The  
49 assignment or other writing attached shall be that by which the creditor  
50 or other assignee acquired the private education loan, not a document  
51 prepared for litigation or collection purposes;

52 17. A copy of all pages of the contract, application or other docu-  
53 ments evidencing the private education loan borrower's, and if applica-  
54 ble, cosigner's liability for the private education loan, stating all  
55 terms and conditions applicable to the private education loan; and



1 18. A signed affidavit or affidavits from each of the previous owners  
2 of the private education loan regarding when the previous owner acceler-  
3 ated the loan from delinquency status to default status, or if applica-  
4 ble, a statement that no such acceleration occurred.

5 § 1107. Enforcement. 1. All private education lenders, creditors and  
6 debt collectors shall comply with the provisions of this article.

7 2. Any borrower or cosigner who suffers damage as a result of the  
8 failure of a private education lender, creditor, or debt collector  
9 covered by the provision of this article may bring an action on their  
10 own behalf and on behalf of a similarly situated class of consumers  
11 against that person to recover or obtain any of the following:

12 (a) Actual damages, but in no case shall the total award of damages be  
13 less than five hundred dollars per person, per violation.

14 (b) Punitive damages.

15 (c) Correction of that person's credit report.

16 (d) Injunctive relief.

17 (e) Any other relief that the court deems proper.

18 3. In the case of any successful action to enforce the foregoing  
19 liability, a private education lender, creditor, or debt collector is  
20 liable for the costs of the action, together with reasonable attorneys'  
21 fees as determined by the court.

22 4. The attorney general or the district attorney of any county may  
23 bring an action in the name of the people of the state to restrain or  
24 prevent any violation of this article or any continuance of any such  
25 violation.

26 5. Nothing in this article shall limit any statutory or common law  
27 right of any person to bring any action in any court for any act, or the  
28 right of the state to punish any person for any violation of any law.

29 § 1108. Rules and regulations. 1. In addition to such powers as may  
30 otherwise be prescribed by this chapter, the superintendent of financial  
31 services is hereby authorized and empowered to promulgate such rules and  
32 regulations as may in the judgment of the superintendent be consistent  
33 with the purposes of this article, or appropriate for the effective  
34 administration of this article, including, but not limited to:

35 (a) such rules and regulations in connection with the activities of  
36 private education lenders, creditors, and debt collectors as may be  
37 necessary and appropriate for the protection of borrowers in this state;

38 (b) such rules and regulations as may be necessary and appropriate to  
39 define unfair, deceptive or abusive acts or practices in connection with  
40 the activities of private education lenders, creditors, and debt collec-  
41 tors;

42 (c) such rules and regulations as may define the terms used in this  
43 article and as may be necessary and appropriate to interpret and imple-  
44 ment the provisions of this article; and

45 (d) such rules and regulations as may be necessary for the enforcement  
46 of this article.

47 2. The superintendent is hereby authorized and empowered to make such  
48 specific rulings, demands and findings as the superintendent may deem  
49 necessary for the proper conduct of the private education loan industry.

50 § 1109. Penalties. In addition to such penalties as may otherwise be  
51 applicable by law, including but not limited to the penalties available  
52 under section forty-four of the banking law, the superintendent of  
53 financial services or the attorney general may, after notice and hear-  
54 ing, require any person found violating the provisions of this article  
55 or the rules or regulations promulgated hereunder to pay to the people  
56 of this state a penalty for each violation of the article or any regu-

1 lation or policy promulgated hereunder a sum not to exceed the greater  
2 of (i) ten thousand dollars for each offense; (ii) a multiple of two  
3 times the aggregate damages attributable to the violation; or (iii) a  
4 multiple of two times the aggregate economic gain attributable to the  
5 violation.

6 § 2. The civil practice law and rules is amended by adding a new  
7 section 3012-c to read as follows:

8 § 3012-c. Requirements relating to judgments against private education  
9 loan borrowers or cosigners. (a) In addition to any other papers and  
10 documents required by this chapter, an attorney representing a creditor  
11 seeking a judgment arising from a private education loan debt, shall  
12 submit a sworn affidavit attesting that:

13 (1) The creditor has in its possession the following information:

14 (i) The name of the owner of the private education loan;

15 (ii) The original creditor's name at the time the loan was purchased,  
16 and/or the loan went into default, if applicable;

17 (iii) The original creditor's account number used to identify the  
18 private education loan when the loan was sold and/or at the time of  
19 default, if the original creditor used an account number to identify the  
20 private education loan at the time of sale and/or default;

21 (iv) The amount due at the time the loan was sold by the original  
22 creditor and/or at the time of default;

23 (v) A schedule of all transactions credited or debited to the private  
24 education loan account;

25 (vi) An itemization of interest and fees, if any, claimed to be owed  
26 and whether those were imposed by the original creditor or any subse-  
27 quent owners of the private education loan;

28 (vii) The date that the private education loan was incurred;

29 (viii) The date of the first partial payment and/or the first day that  
30 a payment was missed, whichever is earlier;

31 (ix) The date and amount of the last payment, if applicable;

32 (x) Any payments, settlement, or financial remuneration of any kind  
33 paid to the creditor by a guarantor, cosigner, or surety, and the amount  
34 of payment received;

35 (xi) A copy of the self-certification form and any other "needs analy-  
36 sis" conducted by the original creditor prior to origination of the  
37 loan;

38 (xii) The names of all persons or entities that owned the private  
39 education loan, if applicable, and the date of each sale or transfer;

40 (xiii) A log of all collection attempts made in the last twelve months  
41 including date and time of all calls and letters;

42 (xiv) A statement as to whether the creditor is willing to re-negoti-  
43 ate the terms of the debt;

44 (xv) Copies of all settlement letters made in the last twelve months,  
45 or, in the alternative, a statement that the creditor has not attempted  
46 to settle or otherwise renegotiate the debt prior to suit;

47 (xvi) Copies of all collection letters sent to the borrower and cosig-  
48 ner since inception of the loan;

49 (xvii) Documentation establishing that the creditor is the owner of  
50 the specific individual private education loan at issue. If the private  
51 education loan was assigned more than once, the creditor must possess  
52 each assignment or other writing evidencing the transfer of ownership of  
53 the specific individual private education loan to establish an unbroken  
54 chain of ownership, beginning with the original creditor to the first  
55 subsequent creditor and each additional creditor. Each assignment or  
56 other writing evidencing transfer of ownership or the right to collect



1 must contain the original creditor's account number (redacted for secu-  
2 rity purposes to show only the last four digits) of the private educa-  
3 tion loan purchased or otherwise assigned, the date of purchase and  
4 assignment, and must clearly show the borrower's, and if applicable,  
5 cosigner's correct name associated with the original account number. The  
6 assignment or other writing attached shall be that by which the creditor  
7 or other assignee acquired the private education loan, not a document  
8 prepared for litigation;

9 (xviii) A copy of all pages of the contract, application or other  
10 documents evidencing the private education loan borrower's or cosigner's  
11 liability for the private education loan, stating all terms and condi-  
12 tions applicable to the private education loan;

13 (xix) An affidavit stating that the communication required in section  
14 eleven hundred five of the general business law has been complied with;

15 (xx) A statement as to whether the debt is eligible for an income-  
16 based repayment plan free of charge to the borrower or cosigner, equiv-  
17 alent to the repayment arrangement established for federal student loans  
18 under Article IV of the Higher Education Act (20 USC 1078 et. seq.);

19 (xxi) A statement as to whether the debt is a qualified education loan  
20 as defined in 26 U.S.C. § 221; and

21 (xxii) A signed affidavit or affidavits from each of the previous  
22 owners of the private education loan stating when the previous owner  
23 accelerated the loan from delinquency status to default status, or if  
24 applicable, that the loan had not been accelerated at the time of the  
25 sale; and

26 (2) A representative of the creditor personally reviewed the informa-  
27 tion set forth in paragraph one of this subdivision for factual accuracy  
28 and confirmed the factual accuracy of the allegations set forth in the  
29 complaint and any supporting affidavits or affirmations filed with the  
30 court, as well as the accuracy of the notarizations contained in the  
31 supporting documents filed therewith.

32 (b) Copies of the documentation identified in subparagraphs (xvii),  
33 (xviii) and (xxii) of paragraph one of subdivision (a) of this section  
34 shall be attached to the application seeking a judgment arising from a  
35 private education loan debt.

36 (c) An attorney representing a creditor seeking a judgment arising  
37 from a private education loan debt shall also submit a sworn affidavit  
38 containing the following information:

39 (1) The applicable statute or statutes of limitations for the cause or  
40 causes of action asserted by the creditor for the private education loan  
41 debt; and

42 (2) A statement that based upon counsel's reasonable inquiry, the  
43 applicable statute or statutes of limitations for the cause or causes of  
44 action asserted by the creditor has not expired.

45 (d) A judge or clerk shall not grant or enter a judgment arising from  
46 a private education loan debt that does not comply with the requirements  
47 described in subdivisions (a), (b), and (c) of this section.

48 (e) (1) Upon receipt of written notice provided by a borrower or  
49 cosigner, or upon notice from the attorney general or superintendent of  
50 financial services on behalf of a group of borrowers, to a creditor or  
51 debt collector stating that the creditor or debt collector has failed to  
52 comply with this section, the creditor or debt collector shall:

53 (i) Provide proof of compliance with the provisions of this section;  
54 or

55 (ii) Take the following actions:

56 1. move to vacate the judgment;

1 2. refund all monies paid by the borrower or cosigner after the judg-  
2 ment was entered; and

3 3. take all actions necessary to remove all negative credit history  
4 furnished after default.

5 (2) If a creditor or debt collector fails to comply with paragraph one  
6 of this subdivision, the borrower or cosigner may bring an action on his  
7 or her own behalf or on behalf of a similarly situated class of persons  
8 against that creditor to recover or obtain any of the following:

9 (i) An order setting aside or vacating any judgment entered against  
10 the borrower or cosigner;

11 (ii) A judgment in favor of the borrower or cosigner;

12 (iii) Actual damages, but in no case shall the total award of damages  
13 be less than five hundred dollars per person, per violation;

14 (iv) Restitution of all moneys taken from or paid by the borrower or  
15 cosigner after a judgment was obtained by a creditor;

16 (v) Punitive damages;

17 (vi) Correction of the borrower's or cosigner's credit report;

18 (vii) Injunctive relief; and

19 (viii) Any other relief that the court deems proper.

20 (3) In the case of any successful action to enforce the foregoing  
21 liability, a private education lender, creditor, or debt collector is  
22 liable for the costs of the action, together with reasonable attorneys'  
23 fees as determined by the court.

24 (4) In addition to any other remedies provided by this subdivision or  
25 otherwise provided by law, whenever it is proven by a preponderance of  
26 the evidence that a creditor or attorney representing a creditor filed  
27 an affidavit required under this section containing false information,  
28 the court shall award treble actual damages to the borrower or cosigner,  
29 but in no case shall the award of damages be less than one thousand five  
30 hundred dollars, per person, per violation.

31 (f) The definitions of terms set forth in section eleven hundred of  
32 the general business law shall apply to the provisions of this section.

33 § 3. This act shall take effect immediately.