

STATE OF NEW YORK

5136--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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.);

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

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

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

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

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

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

12 2. "Private education lender", except as exempted under this article,
13 means:

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

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

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

20 4. "Cosigner" (a) means:

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

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

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

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

34 6. "Creditor" means:

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

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

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

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

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

1 § 1101. Applicability. 1. Any person or entity that enters into a
2 contract or subcontract with a private education lender or servicer to
3 perform the servicing of a private education loan must fulfill the obli-
4 gations of the private education lender under this article.

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

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

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

16 2. Any subsidiary of such entities set forth in subdivision one of
17 this section.

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

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

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

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

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

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

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

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

1 used by the lender, the borrower's consumer report, the borrower's cred-
2 it score, and any other documents specific to the borrower. The lender
3 must also provide any adverse action notices required under applicable
4 federal law if the denial is based in whole or in part on any informa-
5 tion contained in a consumer report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 § 1106. Required information to be provided by creditors and debt
55 collectors. A creditor may not collect or attempt to collect a private

1 education loan debt unless the creditor or debt collector possesses the
2 following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 17. A copy of all pages of the contract, application or other docu-
56 ments evidencing the private education loan borrower's, and if applica-

1 ble, cosigner's liability for the private education loan, stating all
2 terms and conditions applicable to the private education loan; and

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

7 § 1107. Enforcement. 1. All private education lenders, creditors and
8 debt collectors shall comply with the provisions of this article.

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

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

16 (b) Punitive damages.

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

18 (d) Injunctive relief.

19 (e) 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. The attorney general or the district attorney of any county may
25 bring an action in the name of the people of the state to restrain or
26 prevent any violation of this article or any continuance of any such
27 violation.

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

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

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

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

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

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

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

52 § 1109. Penalties. In addition to such penalties as may otherwise be
53 applicable by law, including but not limited to the penalties available
54 under section forty-four of the banking law, the superintendent of
55 financial services may, after notice and a hearing, or upon a finding of
56 a violation of this article in a civil action brought by the attorney

1 general, require any person found violating the provisions of this arti-
2 cle or the rules or regulations promulgated hereunder to pay to the
3 people of this state a penalty for each violation of the article or any
4 regulation or policy promulgated hereunder a sum not to exceed the
5 greater of (i) ten thousand dollars for each offense; (ii) a multiple of
6 two times the aggregate damages attributable to the violation; or (iii)
7 a multiple of two times the aggregate economic gain attributable to the
8 violation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 (xvii) Documentation establishing that the creditor is the owner of
53 the specific individual private education loan at issue. If the private
54 education loan was assigned more than once, the creditor must possess
55 each assignment or other writing evidencing the transfer of ownership of
56 the specific individual private education loan to establish an unbroken

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (i) Provide proof of compliance with the provisions of this section;
2 or

3 (ii) Take the following actions:

- 4 1. move to vacate the judgment;
5 2. refund all monies paid by the borrower or cosigner after the judg-
6 ment was entered; and
7 3. take all actions necessary to remove all negative credit history
8 furnished after default.

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

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

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

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

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

20 (v) Punitive damages;

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

22 (vii) Injunctive relief; and

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

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

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

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

37 § 3. This act shall take effect immediately.