

STATE OF NEW YORK

4922--C

2025-2026 Regular Sessions

IN ASSEMBLY

February 10, 2025

Introduced by M. of A. LEVENBERG, SIMON, FORREST, EACHUS, SIMONE, BURDICK, SHIMSKY, HEVESI -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, 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-A to read as follows:

3 ARTICLE 42-A

4 PRIVATE EDUCATION LOAN PROTECTIONS

5 Section 1200. Definitions.

6 1201. Applicability.

7 1202. Exempt organizations.

8 1203. Provisions applicable to cosigners.

9 1204. Prohibition on acceleration of payments on private educa-
10 tion loans.

11 1205. Required communications from creditors and debt collec-
12 tors.

13 1206. Required information to be provided by creditors and debt
14 collectors.

15 1207. Enforcement.

16 1208. Rules and regulations.

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

LBD08810-06-6

1209. Penalties.

§ 1200. Definitions. As used in this article:

1. "Private education loan" or "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;

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

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

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

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

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

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

(b) any holder of a private education loan.

3. "Borrower" or "private education loan borrower" means a person who has received or agreed to pay a private education loan for such person's own educational expenses.

4. "Cosigner" (a) means:

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

(ii) includes any person the signature of which is requested as condition to grant credit or to forbear on collection;

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

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

6. "Creditor" means:

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

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

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

7. "Debt collector" means any person who regularly collects or attempts to collect, directly or indirectly, consumer debts originally owed or due or asserted to be owed or due another. The term does not include any officer or employee of a creditor who, in the name of the creditor, collects debts for such creditor, but it does include any creditor who, in the process of collecting its own debts, uses any name

1 other than its own which would indicate that a third person is collect-
2 ing or attempting to collect such debts.

3 8. "Higher education expense" means any expense arising from higher
4 education, as defined in section two of the education law, regardless of
5 whether the higher education institution is accredited within New York
6 state.

7 § 1201. Applicability. 1. Any person or entity that enters into a
8 contract or subcontract with a private education lender or servicer to
9 perform the servicing of a private education loan must fulfill the obli-
10 gations of the private education lender under this article.

11 2. Any private education lender as described in subdivision two of
12 section twelve hundred of this article be jointly and severally liable
13 for the actions of the entity or person in fulfilling the obligations of
14 the private education lender or servicer under this article.

15 § 1202. Exempt organizations. The following shall be exempt from the
16 provisions of this article only to the extent that state regulation is
17 preempted by federal law:

18 1. Any banking organization, foreign banking corporation, national
19 bank, federal savings association, federal credit union, or any bank,
20 trust company, savings bank, savings and loan association, or credit
21 union organized under the laws of any other state; and

22 2. Any subsidiary of such entities set forth in subdivision one of
23 this section.

24 § 1203. Provisions applicable to cosigners. 1. (a) Prior to the origi-
25 nation of a private education loan, the private education lender shall
26 provide to all cosigner applicants information about the rights and
27 responsibilities of the cosigner of the loan, including:

28 (i) information about how the private education lender will furnish
29 information about the cosigner's private education loan obligation to
30 credit reporting agencies;

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

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

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

43 (c) Once the borrower has met the applicable consecutive on-time
44 payment requirement to be eligible for cosigner release, the lender
45 shall send the borrower and cosigner a written notification by U.S. mail
46 and by electronic mail, where a borrower has elected to receive elec-
47 tronic communications from the lender, informing the borrower and cosig-
48 ner that such person has met the applicable consecutive, on-time
49 payments requirement to be eligible for cosigner release. The notifica-
50 tion shall also include information about any additional criteria to
51 qualify for cosigner release, and the procedure to apply for cosigner
52 release.

53 (d) Lenders shall provide written notice within fifteen days to any
54 borrower who applies for cosigner release, but whose application is
55 incomplete. The written notice must include a description of the infor-

1 mation needed to consider the application complete and the date by which
2 the applicant should furnish the missing information.

3 (e) After a borrower submits a complete application for cosigner
4 release, within thirty days, the lender shall send the borrower and
5 cosigner a written notice that informs the borrower and cosigner whether
6 the cosigner release application has been approved or denied. If the
7 lender denies a request for cosigner release, the lender shall inform
8 the borrower of such person's right to request all documents and infor-
9 mation used in the determination, including the credit score threshold
10 used by the lender, the borrower's consumer report, the borrower's cred-
11 it score, and any other documents specific to the borrower. The lender
12 must also provide any adverse action notices required under applicable
13 federal law if the denial is based in whole or in part on any informa-
14 tion contained in a consumer report.

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

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

21 (c) Lenders shall not impose any negative consequences on any borrower
22 or cosigner during the sixty days following the issuance of the notice
23 required under paragraph (d) of subdivision one of this section, or
24 until the lender makes a final determination about a borrower's cosigner
25 release application. For the purpose of this paragraph, "negative conse-
26 quences" includes, but is not limited to, the imposition of additional
27 eligibility criteria, negative credit reporting, lost eligibility for
28 cosigner release, late fees, interest capitalization, or other financial
29 injury.

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

36 (e) If a borrower or cosigner requests a change that restarts the
37 count of consecutive, on-time payments required for cosigner release,
38 the lender shall notify the borrower and cosigner in writing within ten
39 days of the impact of such an arrangement and provide the borrower or
40 cosigner the right to withdraw or reverse the request to avoid such
41 impact.

42 (f) The borrower has the right to request an appeal of a lender's
43 determination to deny the cosigner release application within ninety
44 days of receiving the lender's determination, and the lender shall
45 permit such borrower to submit additional documentation evidencing that
46 the borrower has the ability, willingness, and stability to handle such
47 person's payment obligations. The borrower may request review of the
48 cosigner release determination by another employee. The lender shall
49 inform the borrower of this right in a clear and conspicuous manner on
50 the notice denying the cosigner release application.

51 (g) A lender must establish and maintain a comprehensive record
52 management system reasonably designed to ensure the accuracy, integrity,
53 and completeness of data and other information about cosigner release
54 applications. This system shall include the number of cosigner release
55 applications received, the approval and denial rate, and the primary
56 reasons for any denial.

1 (h) If a cosigner becomes totally and permanently disabled, as deter-
2 mined by any federal agency, state agency, or physician or doctor of
3 osteopathy legally authorized to practice in the state in which the
4 cosigner resides, the lender shall release the cosigner from the
5 cosigner's obligation to repay the loan upon receiving a notification of
6 the cosigner's total and permanent disability. The lender shall not
7 require a new cosigner to be added to the loan after the original cosig-
8 ner has been released from the loan.

9 (i) If the borrower dies, the lender shall release the cosigner from
10 the cosigner's obligation to repay the loan upon receiving notification
11 of the borrower's death.

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

15 (b) If a lender provides electronic access to documents and records
16 for a borrower, it shall provide equivalent electronic access to the
17 cosigner; and

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

20 § 1204. Prohibition on acceleration of payments on private education
21 loans. 1. Except as provided in subdivision two of this section, a
22 private education loan executed after the effective date of this article
23 may not include a provision that permits the private education lender to
24 accelerate, in whole or in part, payments on the private education loan.

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

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

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

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

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

39 § 1205. Required communications from creditors and debt collectors.
40 In addition to any other information required under applicable federal
41 or state law, a creditor or debt collector shall provide, in writing, in
42 the first debt collection communication with the private education loan
43 borrower or cosigner, or within five days thereafter, and at any other
44 time the borrower or cosigner requests such documentation:

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

46 2. The original creditor's name at the time of origination and, if
47 different, at the time of sale of the loan, if applicable;

48 3. The original creditor's account number used to identify the private
49 education loan debt at the time of sale, if applicable;

50 4. The total outstanding amount owed at the time of default or the
51 amount due to bring the loan current if the loan is delinquent, but not
52 yet in default;

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

55 6. A copy of all pages of the contract, application or other documents
56 stating all terms and conditions applicable to the private education

1 loan and evidencing the private education loan borrower's or cosigner's
2 liability for the private education loan; and

3 7. A clear and conspicuous statement disclosing that the borrower or
4 cosigner has a right to request all information possessed by the credi-
5 tor related to the private education loan debt, including, but not
6 limited to the information included in section twelve hundred six of
7 this article.

8 § 1206. Required information to be provided by creditors and debt
9 collectors. 1. A creditor or debt collector may not collect or attempt
10 to collect a private education loan debt unless the creditor or debt
11 collector possesses the following:

12 (a) The name of the owner of the private education loan;

13 (b) The original creditor's name at the time of sale of the loan or
14 default, if applicable;

15 (c) The original creditor's account number used to identify the
16 private education loan at the time of sale or default, if the original
17 creditor used an account number to identify the private education loan
18 at the time of sale or default;

19 (d) The amount due at the time of sale, or at default, or, if the loan
20 is delinquent, to bring the loan current;

21 (e) A schedule of all transactions credited or debited to the private
22 education loan account;

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

26 (g) The date that the private education loan was incurred;

27 (h) A billing statement or other account record indicating the date of
28 the first partial payment and/or the first day that a payment was
29 missed, whichever is earlier;

30 (i) A billing statement or other account record indicating the date of
31 the last payment made by the borrower or cosigner, if applicable;

32 (j) 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 (k) 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 (l) A log of all collection attempts made in the previous twelve
39 months including date and time of all calls and written communications;

40 (m) Copies of all written settlement offers sent in the last twelve
41 months, or, in the alternative, a statement that the creditor has not
42 attempted to settle or otherwise renegotiate the debt prior to suit;

43 (n) Copies of all collection letters sent to the borrower and cosigner
44 since inception of the loan;

45 (o) Documentation establishing that the creditor is the owner of the
46 specific individual private education loan at issue. If the private
47 education loan was assigned more than once, the creditor must possess
48 each assignment or other writing evidencing the transfer of ownership of
49 the specific individual private education loan to establish an unbroken
50 chain of ownership, beginning with the original creditor to the first
51 subsequent creditor and each additional creditor. Each assignment or
52 other writing evidencing transfer of ownership or the right to collect
53 must contain the original creditor's account number (redacted for secu-
54 rity purposes to show only the last four digits) of the private educa-
55 tion loan purchased or otherwise assigned, the date of purchase and
56 assignment, and must clearly show the borrower's, and if applicable,

1 cosigner's correct name associated with the original account number. The
2 assignment or other writing attached shall be that by which the creditor
3 or other assignee acquired the private education loan, not a document
4 prepared for litigation or collection purposes;

5 (p) A copy of all pages of the contract, application or other docu-
6 ments evidencing the private education loan borrower's, and if applica-
7 ble, cosigner's liability for the private education loan, stating all
8 terms and conditions applicable to the private education loan; and

9 (q) A signed affidavit or affidavits from each of the previous owners
10 of the private education loan regarding when the previous owner accel-
11 erated the loan from delinquency status to default status, or if applica-
12 ble, a statement that no such acceleration occurred.

13 2. Upon written or oral request from a borrower or cosigner for any
14 information that a creditor or debt collector is required to possess
15 pursuant to subdivision one of this section, a creditor or debt collec-
16 tor shall send the requested information to the borrower or cosigner
17 within fifteen days of receipt of the request.

18 § 1207. Enforcement. 1. All private education lenders, creditors and
19 debt collectors shall comply with the provisions of this article.

20 2. No private education lenders, creditors or debt collectors shall
21 engage in unfair, deceptive, or abusive acts or practices.

22 3. The attorney general may bring an action in the name of the people
23 of the state to restrain or prevent any violation of this article or any
24 continuance of any such violation and to obtain restitution of any
25 moneys or property obtained directly or indirectly by any such
26 violation, as well as reasonable attorneys' fees.

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

30 § 1208. Rules and regulations. 1. In addition to such powers as may
31 otherwise be prescribed by this chapter, the superintendent of financial
32 services is hereby authorized and empowered to promulgate such rules and
33 regulations as may in the judgment of the superintendent of financial
34 services be consistent with the purposes of this article, or appropriate
35 for the effective administration of this article, including, but not
36 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 of financial services is hereby authorized and
50 empowered to make such specific rulings, demands and findings as the
51 superintendent may deem necessary for the proper conduct of the private
52 education loan industry.

53 § 1209. Penalties. In addition to such penalties as may otherwise be
54 applicable by law, including but not limited to the penalties available
55 under section forty-four of the banking law, the superintendent of
56 financial services may, after notice and a hearing, or upon a finding of

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

10 § 2. Subdivision (q-1) of section 105 of the civil practice law and
11 rules, as added by chapter 593 of the laws of 2021, is amended to read
12 as follows:

13 (q-1) Original creditor. The term "original creditor" means the entity
14 that owned a consumer credit account at the date of default giving rise
15 to a cause of action; except that if the consumer credit account is a
16 private education loan, as defined in subdivision one of section twelve
17 hundred of the general business law, "original creditor" means the
18 private education lender identified in a promissory note, loan agree-
19 ment, or loan contract entered into with a private education loan
20 borrower or cosigner.

21 § 3. Severability. If any clause, sentence, paragraph, subdivision,
22 section or part of this act shall be adjudged by any court of competent
23 jurisdiction to be invalid, such judgment shall not affect, impair, or
24 invalidate the remainder thereof, but shall be confined in its operation
25 to the clause, sentence, paragraph, subdivision, section or part thereof
26 directly involved in the controversy in which such judgment shall have
27 been rendered. It is hereby declared to be the intent of the legislature
28 that this act would have been enacted even if such invalid provisions
29 had not been included herein.

30 § 4. This act shall take effect on the one hundred eightieth day after
31 it shall have become a law.