

STATE OF NEW YORK

4922--B

2025-2026 Regular Sessions

IN ASSEMBLY

February 10, 2025

Introduced by M. of A. LEVENBERG, SIMON, FORREST, EACHUS, SIMONE, BURDICK -- 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

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:

ARTICLE 42-A

PRIVATE EDUCATION LOAN PROTECTIONS

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.

17 1209. Penalties.

18 § 1200. Definitions. As used in this article:

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

LBD08810-05-6

1 1. "Private education loan" means an extension of credit that:

2 (a) is not made, insured, or guaranteed under title IV of the Higher
3 Education Act of 1965 (20 U.S.C. 1070 et seq.);

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

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

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

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

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

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

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

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

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

23 4. "Cosigner" (a) means:

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

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

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

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

37 6. "Creditor" means:

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

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

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

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

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

5 § 1201. Applicability. 1. Any person or entity that enters into a
6 contract or subcontract with a private education lender or servicer to
7 perform the servicing of a private education loan must fulfill the obli-
8 gations of the private education lender under this article.

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

13 § 1202. Exempt organizations. The following shall be exempt from the
14 provisions of this article only to the extent that state regulation is
15 preempted by federal law:

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

20 2. Any subsidiary of such entities set forth in subdivision one of
21 this section.

22 § 1203. Provisions applicable to cosigners. 1. (a) Prior to the origi-
23 nation of a private education loan, the private education lender shall
24 provide to all cosigner applicants information about the rights and
25 responsibilities of the cosigner of the loan, including:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 (h) If a cosigner has a total and permanent disability, as determined
56 by any federal agency, state agency, or physician or doctor of osteopa-

1 thy legally authorized to practice in the state in which the cosigner
2 resides, the lender shall release the cosigner from the cosigner's obli-
3 gation to repay the loan upon receiving a notification of the cosigner's
4 total and permanent disability. The lender shall not require a new
5 cosigner to be added to the loan after the original cosigner has been
6 released from the loan.

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

10 (b) If a lender provides electronic access to documents and records
11 for a borrower, it shall provide equivalent electronic access to the
12 cosigner; and

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

15 § 1204. Prohibition on acceleration of payments on private education
16 loans. 1. Except as provided in subdivision two of this section, a
17 private education loan executed after the effective date of this article
18 may not include a provision that permits the private educational lender
19 to accelerate, in whole or in part, payments on the private education
20 loan.

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

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

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

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

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

35 § 1205. Required communications from creditors and debt collectors.
36 In addition to any other information required under applicable federal
37 or state law, a creditor or debt collector shall provide, in writing, in
38 the first debt collection communication with the private education loan
39 borrower or cosigner, or within five days thereafter, and at any other
40 time the borrower or cosigner requests such documentation:

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

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

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

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

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

51 6. A copy of all pages of the contract, application or other documents
52 stating all terms and conditions applicable to the private education
53 loan and evidencing the private education loan borrower's or cosigner's
54 liability for the private education loan; and

55 7. A clear and conspicuous statement disclosing that the borrower or
56 cosigner has a right to request all information possessed by the credi-

1 tor related to the private education loan debt, including, but not
2 limited to the information included in section twelve hundred six of
3 this article.

4 § 1206. Required information to be provided by creditors and debt
5 collectors. 1. A creditor or debt collector may not collect or attempt
6 to collect a private education loan debt unless the creditor or debt
7 collector possesses the following:

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

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

11 (c) The original creditor's account number used to identify the
12 private education loan at the time of sale or default, if the original
13 creditor used an account number to identify the private education loan
14 at the time of sale or default;

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

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

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

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

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

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

28 (j) Any payments, settlement, or financial remuneration of any kind
29 paid to the creditor by a guarantor, cosigner, or surety, and the amount
30 of payment received;

31 (k) A copy of the self-certification form and any other "needs analy-
32 sis" conducted by the original creditor prior to origination of the
33 loan;

34 (l) A log of all collection attempts made in the previous twelve
35 months including date and time of all calls and written communications;

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

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

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

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

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

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

14 § 1207. Enforcement. 1. All private education lenders, creditors and
15 debt collectors shall comply with the provisions of this article.

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

18 3. Any borrower or cosigner who suffers damage as a result of the
19 failure of a private education lender, creditor, or debt collector
20 covered by the provisions of this article may bring an action on their
21 own behalf and on behalf of a similarly situated class of consumers
22 against that person to recover or obtain any of the following:

23 (a) actual damages, but in no case shall the total award of damages be
24 less than five hundred dollars per person, per violation of this
25 section;

26 (b) punitive damages;

27 (c) correction of any inaccurate, negative reporting by the lender,
28 creditor, or debt collector to any credit reporting agency;

29 (d) injunctive relief; or

30 (e) any other relief that the court deems proper.

31 4. In the case of any successful action to enforce the foregoing
32 liability, a private education lender, creditor, or debt collector shall
33 be liable for the costs of the action, together with reasonable attor-
34 neys' fees as determined by the court.

35 5. The attorney general may bring an action in the name of the people
36 of the state to restrain or prevent any violation of this article or any
37 continuance of any such violation and to obtain restitution of any
38 moneys or property obtained directly or indirectly by any such
39 violation, as well as reasonable attorneys' fees.

40 6. Nothing in this article shall limit any statutory or common law
41 right of any person to bring any action in any court for any act, or the
42 right of the state to punish any person for any violation of any law.

43 § 1208. Rules and regulations. 1. In addition to such powers as may
44 otherwise be prescribed by this chapter, the superintendent of financial
45 services is hereby authorized and empowered to promulgate such rules and
46 regulations as may in the judgment of the superintendent of financial
47 services be consistent with the purposes of this article, or appropriate
48 for the effective administration of this article, including, but not
49 limited to:

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

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

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

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

6 2. The superintendent of financial services is hereby authorized and
7 empowered to make such specific rulings, demands and findings as the
8 superintendent may deem necessary for the proper conduct of the private
9 education loan industry.

10 § 1209. Penalties. In addition to such penalties as may otherwise be
11 applicable by law, including but not limited to the penalties available
12 under section forty-four of the banking law, the superintendent of
13 financial services may, after notice and a hearing, or upon a finding of
14 a violation of this article in a civil action brought by the attorney
15 general, require any person found violating the provisions of this arti-
16 cle or the rules or regulations promulgated hereunder to pay to the
17 people of this state a penalty for each violation of this article or any
18 regulation or policy promulgated hereunder a sum not to exceed the
19 greater of (i) ten thousand dollars for each offense; (ii) a multiple of
20 two times the aggregate damages attributable to the violation; or (iii)
21 a multiple of two times the aggregate economic gain attributable to the
22 violation.

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

26 (q-1) Original creditor. The term "original creditor" means the entity
27 that owned a consumer credit account at the date of default giving rise
28 to a cause of action; except that if the consumer credit account is a
29 private education loan, as defined in subdivision one of section twelve
30 hundred of the general business law, "original creditor" means the
31 private education lender identified in a promissory note, loan agree-
32 ment, or loan contract entered into with a private education loan
33 borrower or cosigner.

34 § 3. Severability. If any clause, sentence, paragraph, subdivision,
35 section or part of this act shall be adjudged by any court of competent
36 jurisdiction to be invalid, such judgment shall not affect, impair, or
37 invalidate the remainder thereof, but shall be confined in its operation
38 to the clause, sentence, paragraph, subdivision, section or part thereof
39 directly involved in the controversy in which such judgment shall have
40 been rendered. It is hereby declared to be the intent of the legislature
41 that this act would have been enacted even if such invalid provisions
42 had not been included herein.

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