

HOUSE BILL 26

D3, F2, I3

1lr1274

(PRE-FILED)

By: **Delegate Lopez**

Requested: October 29, 2020

Introduced and read first time: January 13, 2021

Assigned to: Appropriations and Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 5, 2021

CHAPTER _____

1 AN ACT concerning

2 **Action to Collect a Private Education Loan – Required Documents**

3 FOR the purpose of prohibiting private education lenders and private education loan
4 collectors from initiating a certain action except under certain circumstances;
5 prohibiting a court from entering a certain judgment unless the private education
6 lender or private education loan collector introduces certain documents in
7 accordance with certain rules; requiring a private education lender or private
8 education loan collector to introduce certain information in a certain action;
9 requiring a private education loan collector to provide certain information to a
10 student loan borrower in a certain communication and on request of the student loan
11 borrower; establishing that a failure of a private education loan collector to provide
12 certain information to a student loan borrower under certain circumstances is an
13 unfair, abusive, or deceptive trade practice; authorizing a certain person to bring a
14 certain action; authorizing the court to award certain damages under certain
15 circumstances; providing for the application of this Act; defining certain terms; and
16 generally relating to documents required in an action to collect a private education
17 loan.

18 BY adding to

19 Article – Courts and Judicial Proceedings

20 Section 5–1301 through 5–1304 to be under the new subtitle “Subtitle 13. Action to
21 Collect a Private Education Loan”

22 Annotated Code of Maryland

23 (2020 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
2 That the Laws of Maryland read as follows:

3 **Article – Courts and Judicial Proceedings**

4 **SUBTITLE 13. ACTION TO COLLECT A PRIVATE EDUCATION LOAN.**

5 **5–1301.**

6 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
7 INDICATED.

8 (B) (1) “COSIGNER” MEANS AN INDIVIDUAL WHO IS LIABLE FOR THE
9 OBLIGATION OF ANOTHER WITHOUT COMPENSATION, REGARDLESS OF HOW THE
10 INDIVIDUAL IS DESIGNATED IN THE AGREEMENT WITH RESPECT TO THAT
11 OBLIGATION.

12 (2) “COSIGNER” INCLUDES:

13 (I) AN INDIVIDUAL WHO IS LIABLE FOR AN OBLIGATION UNDER
14 A PRIVATE EDUCATION LOAN EXTENDED TO CONSOLIDATE A BORROWER’S
15 PREEXISTING PRIVATE EDUCATION LOANS; AND

16 (II) AN INDIVIDUAL WHOSE SIGNATURE IS REQUESTED AS A
17 CONDITION TO GRANT CREDIT OR TO FORBEAR FROM COLLECTION.

18 (3) “COSIGNER” DOES NOT INCLUDE THE SPOUSE OF AN INDIVIDUAL
19 UNDER PARAGRAPH (1) OF THIS SUBSECTION.

20 (C) (1) “CREDITOR” MEANS:

21 (I) THE ORIGINAL CREDITOR, IF OWNERSHIP OF A PRIVATE
22 EDUCATION LOAN HAS NOT BEEN SOLD, ASSIGNED, OR TRANSFERRED;

23 (II) THE PERSON, NONDEPOSITORY INSTITUTION, OR TRUST
24 ENTITY THAT OWNED THE PRIVATE EDUCATION LOAN AT THE TIME THE PRIVATE
25 EDUCATION LOAN DEFAULTED, EVEN IF THE PERSON, NONDEPOSITORY
26 INSTITUTION, OR TRUST ENTITY DID NOT ORIGINATE THE PRIVATE EDUCATION
27 LOAN IF THE PRIVATE EDUCATION LOAN WAS NOT SUBSEQUENTLY SOLD,
28 TRANSFERRED, OR ASSIGNED; OR

29 (III) A PERSON, NONDEPOSITORY INSTITUTION, OR TRUST
30 ENTITY THAT PURCHASED A DEFAULTED PRIVATE EDUCATION LOAN FOR

1 **COLLECTION PURPOSES, REGARDLESS OF WHETHER THE PERSON, NONDEPOSITORY**
2 **INSTITUTION, OR TRUST ENTITY:**

- 3 1. **COLLECTED THE PRIVATE EDUCATION LOAN;**
4 2. **HIRED A THIRD PARTY TO COLLECT THE PRIVATE**
5 **EDUCATION LOAN; OR**
6 3. **HIRED AN ATTORNEY FOR COLLECTION LITIGATION.**

7 (2) **“CREDITOR” DOES NOT INCLUDE:**

8 (I) **A BANK AS DEFINED IN THE FEDERAL DEPOSIT INSURANCE**
9 **ACT; OR**

10 (II) **A FEDERAL CREDIT UNION OR STATE CREDIT UNION AS**
11 **THOSE TERMS ARE DEFINED IN THE FEDERAL CREDIT UNION ACT.**

12 (D) **“ORIGINAL CREDITOR” MEANS THE PRIVATE EDUCATION LENDER**
13 **IDENTIFIED IN THE PROMISSORY NOTE, LOAN AGREEMENT, OR LOAN CONTRACT**
14 **ENTERED INTO WITH A STUDENT LOAN BORROWER OR COSIGNER.**

15 (E) (1) **“PRIVATE EDUCATION LENDER” MEANS:**

16 (I) **A PERSON, NONDEPOSITORY INSTITUTION, OR TRUST**
17 **ENTITY ENGAGED IN THE BUSINESS OF SECURING, MAKING, OR EXTENDING PRIVATE**
18 **EDUCATION LOANS; OR**

19 (II) **A HOLDER OF A PRIVATE EDUCATION LOAN.**

20 (2) **“PRIVATE EDUCATION LENDER” DOES NOT INCLUDE:**

21 (I) **A BANK AS DEFINED IN THE FEDERAL DEPOSIT INSURANCE**
22 **ACT; OR**

23 (II) **A FEDERAL CREDIT UNION OR STATE CREDIT UNION AS**
24 **THOSE TERMS ARE DEFINED IN THE FEDERAL CREDIT UNION ACT.**

25 (F) **“PRIVATE EDUCATION LOAN” MEANS AN EXTENSION OF CREDIT THAT:**

26 (1) **IS NOT MADE, INSURED, OR GUARANTEED UNDER TITLE IV OF**
27 **THE HIGHER EDUCATION ACT OF 1965;**

1 **(2) IS EXTENDED TO A CONSUMER EXPRESSLY, WHOLLY OR PARTLY,**
2 **FOR POSTSECONDARY EDUCATIONAL EXPENSES, REGARDLESS OF WHETHER THE**
3 **LOAN IS PROVIDED BY THE INSTITUTION THAT THE STUDENT ATTENDS;**

4 **(3) DOES NOT INCLUDE OPEN-END CREDIT OR ANY LOAN THAT IS**
5 **SECURED BY REAL PROPERTY OR A DWELLING; AND**

6 **(4) DOES NOT INCLUDE AN EXTENSION OF CREDIT IN WHICH THE**
7 **COVERED INSTITUTION IS THE CREDITOR IF:**

8 **(I) THE TERM OF THE EXTENSION OF CREDIT IS NOT MORE**
9 **THAN 90 DAYS; OR**

10 **(II) AN INTEREST RATE WILL NOT BE APPLIED TO THE CREDIT**
11 **BALANCE AND THE TERM OF THE EXTENSION OF CREDIT IS NOT MORE THAN 1 YEAR,**
12 **EVEN IF THE CREDIT IS PAYABLE IN MORE THAN FOUR INSTALLMENTS.**

13 **(G) “PRIVATE EDUCATION LOAN COLLECTION ACTION” MEANS A JUDICIAL**
14 **ACTION IN WHICH A CLAIM IS ASSERTED TO COLLECT A PRIVATE EDUCATION LOAN.**

15 **(H) (1) “PRIVATE EDUCATION LOAN COLLECTOR” MEANS A PERSON,**
16 **NONDEPOSITORY INSTITUTION, OR TRUST ENTITY THAT COLLECTS OR ATTEMPTS TO**
17 **COLLECT ON A DEFAULTED PRIVATE EDUCATION LOAN.**

18 **(2) “PRIVATE EDUCATION LOAN COLLECTOR” DOES NOT INCLUDE:**

19 **(I) A BANK AS DEFINED IN THE FEDERAL DEPOSIT INSURANCE**
20 **ACT; OR**

21 **(II) A FEDERAL CREDIT UNION OR STATE CREDIT UNION AS**
22 **THOSE TERMS ARE DEFINED IN THE FEDERAL CREDIT UNION ACT.**

23 **(I) “STUDENT LOAN BORROWER” MEANS AN INDIVIDUAL WHO RECEIVES OR**
24 **AGREES TO PAY A PRIVATE EDUCATION LOAN.**

25 **5-1302.**

26 **(A) A PRIVATE EDUCATION LENDER OR A PRIVATE EDUCATION LOAN**
27 **COLLECTOR MAY NOT INITIATE A PRIVATE EDUCATION LOAN COLLECTION ACTION**
28 **UNLESS THE PRIVATE EDUCATION LENDER OR PRIVATE EDUCATION LOAN**
29 **COLLECTOR POSSESSES ALL OF THE DOCUMENTS DESCRIBED UNDER SUBSECTION**
30 **(B)(3) OF THIS SECTION.**

31 **(B) (1) THIS SUBSECTION APPLIES ~~TO~~;**

1 **(I) TO A PRIVATE EDUCATION LOAN COLLECTION ACTION,**
2 **INCLUDING A SMALL CLAIM ACTION UNDER § 4-405 OF THIS ARTICLE, THAT IS**
3 **MAINTAINED BY A PRIVATE EDUCATION LENDER OR A PRIVATE EDUCATION LOAN**
4 **COLLECTOR; AND**

5 **(II) REGARDLESS OF THE LEGAL STATUS OF THE TRUST'S**
6 **TRUSTEE.**

7 **(2) IN ADDITION TO ANY OTHER PROVISION OF LAW, A COURT MAY**
8 **NOT ENTER A JUDGMENT IN FAVOR OF A PRIVATE EDUCATION LENDER OR A**
9 **PRIVATE EDUCATION LOAN COLLECTOR UNLESS THE PRIVATE EDUCATION LENDER**
10 **OR PRIVATE EDUCATION LOAN COLLECTOR INTRODUCES INTO EVIDENCE THE**
11 **DOCUMENTS SPECIFIED IN PARAGRAPH (3) OF THIS SUBSECTION IN ACCORDANCE**
12 **WITH THE RULES OF EVIDENCE APPLICABLE TO ACTIONS THAT ARE NOT SMALL**
13 **CLAIMS ACTIONS BROUGHT UNDER § 4-405 OF THIS ARTICLE.**

14 **(3) THE PRIVATE EDUCATION LENDER OR PRIVATE EDUCATION LOAN**
15 **COLLECTOR SHALL INTRODUCE THE FOLLOWING EVIDENCE IN A PRIVATE**
16 **EDUCATION LOAN COLLECTION ACTION:**

17 **(I) THE NAME OF THE OWNER OF THE PRIVATE EDUCATION**
18 **LOAN;**

19 **(II) THE ORIGINAL CREDITOR'S NAME AT THE TIME OF**
20 **DEFAULT, IF APPLICABLE;**

21 **(III) IF THE ORIGINAL CREDITOR USED AN ACCOUNT NUMBER AT**
22 **THE TIME OF DEFAULT, THE LAST FOUR DIGITS OF THE ORIGINAL CREDITOR'S**
23 **ACCOUNT NUMBER;**

24 **(IV) THE AMOUNT DUE AT DEFAULT;**

25 **(V) AN ITEMIZATION OF INTEREST AND FEES, IF ANY,**
26 **INCURRED AFTER DEFAULT THAT ARE CLAIMED TO BE OWED AND WHETHER THE**
27 **INTEREST AND FEES WERE IMPOSED BY THE ORIGINAL CREDITOR OR BY**
28 **SUBSEQUENT OWNERS OF THE PRIVATE EDUCATION LOAN;**

29 **(VI) A RECORD OF THE DATE THAT THE PRIVATE EDUCATION**
30 **LOAN WAS INCURRED;**

31 **(VII) A RECORD OF THE DATE OF THE FIRST PARTIAL PAYMENT**
32 **OR THE DATE THAT A PAYMENT WAS FIRST MISSED, WHICHEVER IS EARLIER;**

1 (VIII) A RECORD OF THE DATE AND AMOUNT OF THE LAST
2 PAYMENT, IF APPLICABLE;

3 (IX) ANY PAYMENTS, SETTLEMENT, OR FINANCIAL
4 REMUNERATION OF ANY KIND PAID TO THE CREDITOR BY A GUARANTOR, COSIGNER,
5 OR SURETY, AND THE AMOUNT OF THE PAYMENT RECEIVED;

6 (X) A COPY OF THE SELF-CERTIFICATION FORM AND ANY
7 OTHER NEEDS ANALYSIS CONDUCTED BY THE ORIGINAL CREDITOR BEFORE THE
8 ORIGINATION OF THE LOAN, REDACTED TO WITHHOLD THE STUDENT LOAN
9 BORROWER'S SOCIAL SECURITY NUMBER, ALL BUT THE LAST FOUR DIGITS OF THE
10 STUDENT LOAN BORROWER'S ACCOUNT NUMBER, AND ANY OTHER PERSONAL
11 IDENTIFYING INFORMATION;

12 (XI) IF APPLICABLE, THE NAMES OF ALL PERSONS THAT OWNED
13 THE PRIVATE EDUCATION LOAN AFTER THE TIME OF DEFAULT AND THE DATE OF
14 EACH SALE OR TRANSFER OF THE LOAN;

15 (XII) A RECORD OF ALL COLLECTION ATTEMPTS MADE IN THE
16 IMMEDIATELY PRECEDING 12 MONTHS, INCLUDING THE DATE AND TIME OF ALL
17 COMMUNICATIONS, IF APPLICABLE;

18 (XIII) A STATEMENT BY THE CREDITOR INDICATING WHETHER
19 THE CREDITOR IS WILLING TO RENEGOTIATE THE TERMS OF THE DEBT;

20 (XIV) 1. COPIES OF ALL SETTLEMENT COMMUNICATIONS
21 MADE IN THE IMMEDIATELY PRECEDING 12 MONTHS, REDACTED TO WITHHOLD THE
22 STUDENT LOAN BORROWER'S SOCIAL SECURITY NUMBER, ALL BUT THE LAST FOUR
23 DIGITS OF THE STUDENT LOAN BORROWER'S ACCOUNT NUMBER, AND ANY OTHER
24 PERSONAL IDENTIFYING INFORMATION; OR

25 2. A STATEMENT THAT THE CREDITOR HAS NOT
26 ATTEMPTED TO SETTLE OR OTHERWISE RENEGOTIATE THE DEBT BEFORE FILING
27 THE PRIVATE EDUCATION LOAN COLLECTION ACTION;

28 (XV) 1. DOCUMENTATION ESTABLISHING THAT THE
29 CREDITOR IS THE OWNER OF THE SPECIFIC INDIVIDUAL PRIVATE EDUCATION LOAN
30 AT ISSUE; AND

31 2. IF THE PRIVATE EDUCATION LOAN WAS ASSIGNED
32 MORE THAN ONCE, A RECORD OF EACH ASSIGNMENT OR OTHER WRITING, NOT
33 INCLUDING A WRITING PREPARED IN ANTICIPATION OF LITIGATION, INDICATING
34 THE TRANSFER OF OWNERSHIP OF THE INDIVIDUAL PRIVATE EDUCATION LOAN

1 BEGINNING WITH THE ORIGINAL CREDITOR AND ENDING WITH THE MOST RECENT
2 ADDITIONAL CREDITOR, INCLUDING:

3 A. THE ORIGINAL CREDITOR'S ACCOUNT NUMBER,
4 REDACTED TO SHOW ONLY THE LAST FOUR DIGITS, FOR THE PRIVATE EDUCATION
5 LOAN PURCHASED OR OTHERWISE ASSIGNED;

6 B. THE DATE OF PURCHASE AND ASSIGNMENT; AND

7 C. THE STUDENT LOAN BORROWER'S CORRECT NAME
8 ASSOCIATED WITH THE ORIGINAL ACCOUNT NUMBER;

9 (XVI) 1. A COPY OF ALL PAGES OF THE CONTRACT,
10 APPLICATION, OR OTHER DOCUMENT EVIDENCING THE STUDENT LOAN
11 BORROWER'S LIABILITY FOR THE PRIVATE EDUCATION LOAN, ~~STATING~~ THAT:

12 A. STATES ALL TERMS AND CONDITIONS APPLICABLE TO
13 THE PRIVATE EDUCATION LOAN; AND

14 B. IS REDACTED TO WITHHOLD THE STUDENT LOAN
15 BORROWER'S SOCIAL SECURITY NUMBER, ALL BUT THE LAST FOUR DIGITS OF THE
16 STUDENT LOAN BORROWER'S ACCOUNT NUMBER, AND ANY OTHER PERSONAL
17 IDENTIFYING INFORMATION; OR

18 2. IF A SIGNED CONTRACT, APPLICATION, OR OTHER
19 DOCUMENT EVIDENCING THE STUDENT LOAN BORROWER'S LIABILITY DOES NOT
20 EXIST, A COPY OF A DOCUMENT PROVIDED TO THE PRIVATE EDUCATION LOAN
21 BORROWER BEFORE THE DEFAULT DEMONSTRATING THAT THE PRIVATE
22 EDUCATION LOAN WAS INCURRED BY THE STUDENT LOAN BORROWER, ~~INCLUDING~~
23 THAT:

24 A. INCLUDES ALL TERMS AND CONDITIONS APPLICABLE
25 TO THE PRIVATE EDUCATION LOAN; AND

26 B. IS REDACTED TO WITHHOLD THE STUDENT LOAN
27 BORROWER'S SOCIAL SECURITY NUMBER, ALL BUT THE LAST FOUR DIGITS OF THE
28 STUDENT LOAN BORROWER'S ACCOUNT NUMBER, AND ANY OTHER PERSONAL
29 IDENTIFYING INFORMATION;

30 (XVII) AN AFFIDAVIT STATING THAT A REPRESENTATIVE OF
31 THE CREDITOR:

1 1. **PERSONALLY REVIEWED THE EVIDENCE SUBMITTED**
2 **TO THE COURT IN ACCORDANCE WITH THIS SUBSECTION FOR FACTUAL ACCURACY;**
3 **AND**

4 2. **CONFIRMED THE FACTUAL ACCURACY OF:**

5 A. **THE ALLEGATIONS SET FORTH IN THE COMPLAINT;**

6 B. **ANY SUPPORTING AFFIDAVITS OR AFFIRMATIONS**
7 **FILED WITH THE COURT; AND**

8 C. **ANY NOTARIZATIONS CONTAINED IN THE**
9 **SUPPORTING DOCUMENTS FILED TO THE COURT;**

10 (XVIII) **AN AFFIDAVIT STATING COMPLIANCE WITH § 5-1303**
11 **OF THIS SUBTITLE;**

12 (XIX) **A STATEMENT AS TO WHETHER A DEBT IS ELIGIBLE FOR AN**
13 **INCOME-BASED REPAYMENT PLAN;**

14 (XX) **A STATEMENT AS TO WHETHER THE DEBT IS ABLE TO BE**
15 **DISCHARGED IN BANKRUPTCY; AND**

16 (XXI) **AN AFFIDAVIT STATING:**

17 1. **THE DATE ON WHICH THE PRIVATE EDUCATION**
18 **LENDER OR PRIVATE EDUCATION LOAN COLLECTOR HAS A GOOD FAITH BELIEF**
19 **THAT THE APPLICABLE STATUTE OF LIMITATIONS WILL EXPIRE; AND**

20 2. **THAT THE PRIVATE EDUCATION LENDER OR PRIVATE**
21 **EDUCATION LOAN COLLECTOR HAS NOT INITIATED THE CONSUMER DEBT**
22 **COLLECTION ACTION AFTER THE APPLICABLE STATUTE OF LIMITATIONS HAS**
23 **EXPIRED.**

24 **5-1303.**

25 (A) **A PRIVATE EDUCATION LOAN COLLECTOR SHALL PROVIDE THE**
26 **INFORMATION DESCRIBED UNDER § 5-1302(B)(3)(I) THROUGH (XI) OF THIS**
27 **SUBTITLE IN THE FIRST COLLECTION COMMUNICATION WITH THE STUDENT LOAN**
28 **BORROWER AND ON REQUEST OF THE STUDENT LOAN BORROWER.**

29 (B) **FAILURE TO PRODUCE TO A STUDENT LOAN BORROWER, ON REQUEST**
30 **OF THE STUDENT LOAN BORROWER, THE DOCUMENTATION DESCRIBED IN**

1 SUBSECTION (A) OF THIS SECTION IS AN UNFAIR, ABUSIVE, OR DECEPTIVE TRADE
2 PRACTICE UNDER § 13-301 OF THE COMMERCIAL LAW ARTICLE.

3 5-1304.

4 (A) A PERSON THAT SUFFERS DAMAGE AS A RESULT OF THE FAILURE OF A
5 CREDITOR TO COMPLY WITH § 5-1302(B)(3) OF THIS SUBTITLE MAY BRING AN
6 ACTION AGAINST THE CREDITOR TO RECOVER OR OBTAIN THE FOLLOWING:

7 (1) AN ORDER VACATING ANY DEFAULT JUDGMENT ENTERED
8 AGAINST THE PERSON;

9 (2) A JUDGMENT IN FAVOR OF THE PERSON;

10 (3) ACTUAL DAMAGES IN AN AMOUNT NOT LESS THAN \$500 PER
11 PERSON, PER VIOLATION;

12 (4) RESTITUTION OF ALL MONEY TAKEN FROM OR PAID BY THE
13 PERSON AFTER A JUDGMENT WAS OBTAINED BY A CREDITOR;

14 (5) PUNITIVE DAMAGES;

15 (6) ATTORNEY'S FEES;

16 (7) CORRECTION OF THE PERSON'S CREDIT REPORT; AND

17 (8) ANY OTHER RELIEF THAT THE COURT CONSIDERS PROPER.

18 (B) IN ADDITION TO ANY JUDGMENT UNDER SUBSECTION (A) OF THIS
19 SECTION, IF A CREDITOR OR COUNSEL REPRESENTING A CREDITOR WILLFULLY
20 FILED AN AFFIDAVIT REQUIRED UNDER THIS TITLE CONTAINING FALSE
21 INFORMATION, THE COURT MAY AWARD TREBLE ACTUAL DAMAGES TO THE PERSON
22 IN AN AMOUNT NOT LESS THAN \$1,500 PER PERSON FOR EACH VIOLATION.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2021.