

HIGHLIGHTED TERMS SHOULD BE FILLED IN WITH THE APPROPRIATE TERM BASED ON JURISDICTION

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF **STATE**:

Section 1. The **SECTION OF LAW** is amended by adding a new article **NUMBER** to read as follows:

SECTION 1. SHORT TITLE– This act shall be known as the “Private Education Loan Protections Act”

SECTION 2. DEFINITIONS– As used in this act:

a. “Cosigner” means:

(1) any individual who is liable for the obligation of another without compensation, regardless of how the individual is designated in the contract or instrument with respect to that obligation, including a postsecondary education debt extended to consolidate a borrower’s pre-existing postsecondary education debt; and

(2) shall include any person whose signature is requested as a condition to grant credit or to forbear on collection.

As used in this act, “cosigner” shall not include a spouse of an individual described in paragraph (1), the signature of whom is needed to perfect the security interest in a loan.

b. “Postsecondary education debt borrower” or “borrower” means any resident of this State who has received or agreed to pay for postsecondary education debt for the borrower’s own educational expenses.

c. “Postsecondary education debt” means an extension of credit, contractual or otherwise, contingent or absolute, that:

(1) is not made, insured, or guaranteed under Title IV of the “Higher Education Act of 1965” (20 U.S.C. s.1070 et seq.); and

(2) is extended to a borrower expressly, in whole or in part, for postsecondary educational expenses, regardless of whether the credit is provided by the provider of postsecondary education that the student attends.

d. “Postsecondary education debt creditor” means any entity engaged in the business of securing, originating, or extending postsecondary education debt, or any

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purchaser, assignee, or holder of such debt. "Postsecondary education debt creditor" shall not include the following persons, only to the extent that State regulation is preempted by federal law:

- (1) any bank, savings bank, savings and loan association, or credit union;
- (2) any wholly owned subsidiary of a bank or credit union; and
- (3) any operating subsidiary where each owner of the operating subsidiary is wholly owned by the same bank or credit union.

e. "Total and permanent disability" means the condition of an individual who:

- (1) has been determined by the United States Secretary of Veterans Affairs to be unemployable due to a service-connected disability; or

- (2) is eligible for Social Security Disability Insurance or Supplemental Security Income and whose next scheduled disability review will be five to seven years or more from the date of the individual's last Social Security Administration disability determination; or

- (3) is unable to work and earn money or attend school by reason of any medically determinable physical or mental impairment, as certified by a doctor of medicine, a doctor of osteopathy, or a nurse practitioner who is legally licensed to practice in the United States, that can be expected to result in death, has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months.

An individual shall not be considered "totally and permanently disabled" under this act on the basis of a condition that existed at the time the individual applied for the postsecondary education debt, unless the individual's condition has deteriorated later so as to render the individual totally and permanently disabled.

SECTION 3. COSIGNER NOTICES

- a. Prior to the extension of postsecondary education debt that requires a cosigner, a postsecondary education debt creditor shall deliver the following information to the cosigner:

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(1) how the postsecondary education debt obligation shall appear on the cosigner's credit;

(2) how the cosigner shall be notified if the postsecondary education debt becomes delinquent, including how the cosigner can cure the delinquency in order to avoid negative credit furnishing and loss of cosigner release eligibility; and

(3) for postsecondary education debt that provides a cosigner release option, the conditions for eligibility for release of the cosigner's obligation on the postsecondary education debt, including the number of on-time payments and any other criteria required to approve the release of cosigner from the postsecondary education debt obligation.

b. For any postsecondary education debt that obligates a cosigner and provides for cosigner release, a postsecondary education debt creditor shall provide the borrower and the cosigner an annual written or electronic notice containing clear and conspicuous information about cosigner release, including the criteria the postsecondary education debt creditor requires to approve the release of the cosigner from the postsecondary education debt obligation and the process for applying for cosigner release. The criteria may include minimum income or credit, or both income and credit, requirements that the postsecondary education debt creditor requires the borrower to satisfy for cosigner release.

c. For any postsecondary education debt that obligates a cosigner and provides for cosigner release, if the borrower has met the applicable payment requirement to be eligible for cosigner release, the postsecondary education debt creditor shall send the borrower and the cosigner a written notification by mail or by electronic mail, where a borrower or cosigner has elected to receive electronic communications from the postsecondary education debt creditor, informing the borrower and cosigner that the payment requirement to be eligible for cosigner release has been met. The notification shall also include information about any additional criteria to qualify for cosigner release, and the procedure to apply for cosigner release.

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d. A postsecondary education debt creditor shall provide written notice to a borrower who applies for cosigner release, but whose application is incomplete. The written notice shall include a description of the information needed to consider the application complete and the date by which the applicant shall furnish the missing information.

e. Within 30 days after a borrower submits a completed application for cosigner release, the postsecondary education debt creditor shall send the borrower and cosigner a written notice that informs the borrower and cosigner whether the cosigner release application has been approved or denied. If the postsecondary education debt creditor denies a request for cosigner release, the borrower may request any documents or information used in the determination, including, but not limited to, the credit score threshold used by the postsecondary education debt creditor and any other documents specific to the borrower in the possession of the postsecondary education debt creditor or the postsecondary education debt creditor's third-party contractors. The postsecondary education debt creditor shall also provide any adverse action notices required under applicable federal law if the denial is based in whole or in part on any information contained in a consumer report.

SECTION 4. COSIGNER RELEASE

a. If the postsecondary education debt creditor provides a cosigner release option, in response to a written or oral request for cosigner release, a postsecondary education debt creditor shall provide the information described in subsection b. of section 3 of this act.

b. If a postsecondary education debt creditor provides a cosigner release option, a postsecondary education debt creditor shall not impose any restriction that permanently bars a borrower from qualifying for cosigner release, including restricting the number of times a borrower may apply for cosigner release.

c. A postsecondary education debt creditor shall not impose any negative consequences on any cosigner during the 60 days following the issuance of the notice

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required pursuant to subsection d. of section 3 of this act, or until the postsecondary education debt creditor makes a final determination about a borrower's cosigner release application. For the purpose of this subsection, "negative consequences" include, but are not limited to, the imposition of additional eligibility criteria, negative credit reporting, lost eligibility for cosigner release, late fees, interest capitalization, or other financial injury.

d. For any postsecondary education debt executed after the effective date of this act and that provides a cosigner release option, a postsecondary education debt creditor shall not require greater than 12 consecutive, on-time payments of principal and interest as the initial criteria for the borrower to submit an application for cosigner release.

e. If a borrower or cosigner requests a change in terms that restarts the count of consecutive, on-time payments required for cosigner release, the postsecondary education debt creditor shall notify the borrower and cosigner in writing, by mail, or by electronic mail, if a borrower or cosigner has elected to receive electronic communications from the postsecondary education debt creditor, of the impact of the change and provide the borrower or cosigner the right to withdraw or reverse the request to avoid that impact.

f. A borrower shall have the right to request an appeal of a postsecondary education debt creditor's determination to deny a request for cosigner release, and the postsecondary education debt creditor shall permit the borrower to submit additional documentation evidencing the borrower's ability, willingness, and stability to meet the payment obligations. The borrower may request a review of the cosigner release determination by another employee.

g. A postsecondary education debt creditor shall establish and maintain a comprehensive record management system reasonably designed to ensure the accuracy, integrity, and completeness of data and other information about cosigner release applications and to ensure compliance with applicable state and federal laws, including but not limited to the "Equal Credit Opportunity Act," 15 U.S.C. s.1691 et seq.,

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and the “Fair Credit Reporting Act,” 15 U.S.C. s.1681 et seq. This system shall include the number of cosigner release applications received, the approval and denial rate, and the primary reasons for any denial.

h. (1) A postsecondary education debt creditor shall provide a cosigner with access to all documents or records related to the cosigned postsecondary education debt that are available to the borrower.

(2) If a postsecondary education debt creditor provides electronic access to documents and records for a borrower, it shall provide equivalent electronic access to the cosigner.

SECTION 5. DEFAULT AND ACCELERATION

a. (1) A postsecondary education debt executed after the effective date of this act shall not include a provision that permits the postsecondary education debt creditor to accelerate, in whole or in part, payments on the postsecondary education debt, except in cases of payment default. A postsecondary education debt creditor shall not place any postsecondary education debt or account into default or accelerate postsecondary education debt for any reason, other than for payment default.

(2) For any postsecondary education debt executed prior to the effective date of this act, the postsecondary education debt creditor shall accelerate payments only if the promissory note or debt agreement explicitly authorizes an acceleration and only for the reasons stated in the note or agreement.

b. (1) Any postsecondary education debt executed after the effective date of this act shall not include a provision that permits the postsecondary education debt creditor to attempt to collect against the cosigner’s estate, other than for payment default.

(2) Upon receiving notification of the death or bankruptcy of a cosigner, when the debt is not more than 60 days delinquent at the time of the notification, the postsecondary education debt creditor shall not change any terms or benefits under the

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promissory note, repayment schedule, repayment terms, or monthly payment amount or any other provision associated with the postsecondary debt education.

c. A postsecondary education debt creditor shall not place any postsecondary education debt or account into default or accelerate postsecondary education debt while a borrower is seeking a debt modification or enrollment in a flexible repayment plan, except that a postsecondary education debt creditor may place postsecondary education debt or account into default or accelerate postsecondary education debt for payment default 90 days following the borrower's default.

SECTION 6. TOTAL AND PERMANENT DISABILITY– For any postsecondary education debt executed after the effective date of this act:

a. A postsecondary education debt creditor, upon determination of the total and permanent disability of a borrower, shall discharge the liability of the borrower and any cosigner on the postsecondary education debt.

b. A postsecondary education debt creditor, upon determination of the total and permanent disability of a cosigner, shall release that individual cosigner from the obligations of the cosigner under the postsecondary education debt.

c. A postsecondary education debt creditor shall notify a borrower and cosigner for postsecondary education debt if either a cosigner or borrower is released from the obligations of the postsecondary education debt under this section, within 30 days of the release.

d. Any postsecondary education debt creditor that extends postsecondary education debt shall provide the borrower an option to designate an individual to have the legal authority to act on behalf of the borrower with respect to the postsecondary education debt product in the event of the total and permanent disability of the borrower.

e. (1) In the event a cosigner is released from the obligations of postsecondary education debt pursuant to this section, the postsecondary education debt creditor shall not require the borrower to obtain another cosigner on the postsecondary education debt obligation.

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(2) A postsecondary education debt creditor shall not declare a default or accelerate the debt against the borrower on the sole basis of the release of the cosigner from the postsecondary education debt obligation.

f. After making the determination described in subsection a. of this section, the postsecondary education debt creditor shall not:

- (1) attempt to collect on the outstanding liability of the borrower or cosigner; or
- (2) monitor the disability status of the borrower at any point after the date of discharge.

SECTION 7. REFINANCING AND ALTERNATIVE REPAYMENT TERMS

a. Prior to offering a person postsecondary education debt that is being used to refinance existing education debt, including education debt made, insured, or guaranteed under Title IV of the “Higher Education Act of 1965” (20 U.S.C. s.1070 et seq.), a postsecondary education debt creditor shall provide the person a disclosure that benefits and protections applicable to the existing education debt may be lost due to the refinancing.

The information provided pursuant to this subsection shall be provided on a one-page information sheet in a 12-point font and shall be written in simple, clear, understandable and easily readable language.

b. If a postsecondary education debt creditor offers any borrower flexible repayment options in connection with postsecondary education debt, those flexible repayment options shall be made available to all borrowers of postsecondary education debt by the postsecondary education debt creditor. A postsecondary education debt creditor shall:

- (1) provide on its website a description of any alternative repayment options offered by the postsecondary education debt creditor for postsecondary education debt;
- (2) establish policies and procedures and implement them consistently in order to facilitate the evaluation of flexible repayment option requests, including providing accurate information regarding any alternative repayment options that may be available

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to the borrower through the promissory note or that may have been marketed to the borrower through marketing materials; and

(3) consistently present and offer postsecondary education debt repayment options to borrowers with similar financial circumstances, if the postsecondary education debt creditor offers repayment options.

c. If a postsecondary education debt creditor does not offer the same interest rate to all borrowers, the postsecondary education debt creditor shall publish the criteria used to determine the rate for which a borrower is eligible in all places where the interest rate is published.

SECTION 8. PROHIBITED CONDUCT– No postsecondary education debt creditor shall:

a. offer any postsecondary education debt that is not in conformity with this act, or that is in violation of any other State or federal law;

b. engage in any unfair, deceptive, or abusive act or practice; or

c. make, advertise, print, display, publish, distribute, electronically transmit, telecast or broadcast, in any manner, any statement or representation which is false, misleading or deceptive.

SECTION 9. REMEDIES

a. A borrower or cosigner who suffers damage as a result of a violation of this act may bring an action in a court of competent jurisdiction to recover:

(1) a judgment in favor of the borrower or cosigner;

(2) actual damages, but in no case shall the total award of damages be less than \$500;

(3) an order enjoining the unlawful methods, acts, or practices;

(4) restitution of money and property; and

(5) any other relief that the court deems proper.

b. In addition to any other remedies provided by this act or otherwise provided by law, whenever it is proven by a preponderance of the evidence that a postsecondary

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education debt creditor has knowingly violated this act, the court shall award treble damages to the borrower or cosigner, but in no case shall the total award of damages be less than \$1,500.

c. In the event of a successful action, the court shall award plaintiff reasonable attorney's fees and costs.

Section 2. This act shall take effect immediately upon becoming law.