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No. 1645

S.P. 530

In Senate, May 5, 2021

An Act To Establish Protections for Private Student Loan Borrowers and a Registry of Lenders

Received by the Secretary of the Senate on May 3, 2021. Referred to the Committee on Health Coverage, Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator VITELLI of Sagadahoc.
Cosponsored by Senators: CURRY of Waldo, DAUGHTRY of Cumberland, HICKMAN of Kennebec, RAFFERTY of York, Representatives: HEPLER of Woolwich, MILLETT of Cape Elizabeth, TALBOT ROSS of Portland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 9-A MRSA Art. 15** is enacted to read:

3 **ARTICLE 15**

4 **PRIVATE STUDENT LENDER REGISTRY**

5 **§15-101. Definitions**

6 As used in this Article, unless the context indicates otherwise, the following terms have
7 the following meanings.

8 **1. Provider of postsecondary education.** "Provider of postsecondary education"
9 means a person engaged in the business of providing postsecondary education directly, by
10 correspondence or by the Internet to a person located in the State. "Provider of
11 postsecondary education" also includes a person not authorized to operate as and not
12 accredited as a postsecondary educational institution in the State.

13 **2. Student financing.** "Student financing" means an extension of credit or a debt or
14 obligation owned or incurred by a student, contractual or otherwise, that:

15 A. Is not made, insured or guaranteed under the federal Higher Education Act of 1965,
16 20 United States Code, Chapter 28, Subchapter IV; and

17 B. Is extended to or owned or incurred by a student expressly for postsecondary
18 education expenses regardless of whether the extension of credit or a debt or obligation
19 owned or incurred is provided by or owed to the provider of postsecondary education
20 that the student attends.

21 "Student financing" does not include a loan secured by real property or a dwelling.

22 **3. Student financing company.** "Student financing company" means a person
23 engaged in the business of making or extending credit to a student for postsecondary
24 education expenses or a holder of debt or obligation owned or incurred by a student to
25 finance postsecondary education expenses. To the extent that state regulation is preempted
26 by federal law, "student financing company" does not include:

27 A. A federally chartered bank, savings bank, savings and loan association or credit
28 union;

29 B. A wholly owned subsidiary of a federally chartered bank or credit union; or

30 C. An operating subsidiary of a wholly owned subsidiary of a federally chartered bank
31 or credit union in which each owner of the operating subsidiary is wholly owned by
32 the same federally chartered bank or credit union.

33 **4. Superintendent.** "Superintendent" means the Superintendent of Consumer Credit
34 Protection within the Department of Professional and Financial Regulation.

35 **§15-102. Private student lender registry**

36 **1. Private student lender registry.** A person may not engage in the business of
37 student financing as a student financing company in the State unless the person:

38 A. Registers with the superintendent under rules adopted by the superintendent; and

1 B. Provides the superintendent, at the time of registration under paragraph A and
2 annually after registration, with the following information for the previous year:

3 (1) A list of all providers of postsecondary education for which the person has
4 provided student financing to a student residing in the State;

5 (2) The number of student financing transactions made to students residing in the
6 State;

7 (3) The number of student financing transactions made for each provider of
8 postsecondary education listed in subparagraph (1);

9 (4) The default rate for a student obtaining student financing from the person; and

10 (5) A sample copy of the promissory note, agreement, contract or other instrument
11 used by the person to extend student financing.

12 **2. Publicly accessible website.** By November 15, 2022, the superintendent shall list
13 on a publicly accessible website the following information, which must be updated on at
14 least an annual basis:

15 A. The name, address, telephone number and website address for each student
16 financing company registered under this section;

17 B. A summary of the information required under subsection 1, paragraph B,
18 subparagraphs (1) to (4); and

19 C. A sample copy of each promissory note, agreement, contract or other instrument
20 provided to the superintendent pursuant to subsection 1, paragraph B, subparagraph
21 (5).

22 **§15-103. Violations**

23 **1. Fine.** The superintendent may impose a fine of up to \$25,000 on a person for any
24 violation of this Article. Each violation of this Article or of any rule adopted pursuant to
25 section 15-104 is a separate offense for the purposes of this section.

26 **2. Suspended from operating in State.** If the superintendent finds that a person has
27 knowingly violated any provision of this Article and the violation caused financial harm to
28 a student, the superintendent may suspend the person from operating as or bar the person
29 from being a stockholder, officer, director, partner, owner or employee of a student
30 financing company for a period of up to 10 years.

31 **3. Crime.** A violation of this Article is a Class E crime.

32 **4. Private right of action.** A person who suffers damage as a result of the failure of
33 another person to comply with this Article may bring an action against the other person for
34 any of the following:

35 A. Actual damages or \$500, whichever is greater;

36 B. An order enjoining the methods, acts or practices;

37 C. Restitution of property;

38 D. Punitive damages;

39 E. Attorney's fees; and

40 F. Any other relief that the court determines proper.

1 C. An operating subsidiary of a wholly owned subsidiary of a federally chartered bank
2 or credit union in which each owner of the operating subsidiary is wholly owned by
3 the same federally chartered bank or credit union.

4 **6. Private education loan.** "Private education loan" means an extension of credit that
5 is extended to a consumer expressly, in whole or in part, for postsecondary education
6 expenses, regardless of whether the loan is provided by the education institution that the
7 student attends, and that is not made, insured or guaranteed under the federal Higher
8 Education Act of 1965, 20 United States Code, Chapter 28, Subchapter IV. "Private
9 education loan" does not include:

10 A. An open-ended credit or any loan that is secured by real property or a dwelling; or

11 B. An extension of credit in which the covered education institution is the creditor if:

12 (1) The term of the extension of credit is 90 days or less; or

13 (2) An interest rate is not applied to the credit balance and the term of the extension
14 of credit is one year or less, regardless of whether the credit is payable in more than
15 4 installments.

16 **7. Private education loan borrower.** "Private education loan borrower" or
17 "borrower" means any resident of this State who has received or agreed to pay a private
18 education loan for the borrower's own education expenses.

19 **8. Private education loan collector.** "Private education loan collector" means a
20 person collecting or attempting to collect on a defaulted private education loan.

21 **9. Private education loan collection action.** "Private education loan collection
22 action" means any judicial action in which a claim is asserted to collect on a defaulted
23 private education loan.

24 **10. Total and permanent disability.** "Total and permanent disability" means the
25 condition of an individual who:

26 A. Has been determined by the United States Secretary of Veterans Affairs to be
27 unemployable due to a service-connected disability; or

28 B. Is unable to engage in any substantial gainful activity by reason of any medically
29 determinable physical or mental impairment that can be expected to result in death, has
30 lasted for a continuous period of not less than 12 months or can be expected to last for
31 a continuous period of not less than 12 months.

32 **§16-102. Cosigned private education loan**

33 **1. Information prior to extension of loan.** Prior to the extension of a private
34 education loan that requires a cosigner, a private education lender shall deliver the
35 following information to the cosigner:

36 A. How the private education loan will appear on the cosigner's credit report;

37 B. How the cosigner will be notified if the private education loan becomes delinquent,
38 and how the cosigner can cure a delinquency to avoid negative credit reporting and loss
39 of cosigner release eligibility; and

40 C. Eligibility criteria for cosigner release, including the number of on-time payments
41 and any other criteria required to approve the cosigner release.

1 **2. Disclosure.** Prior to offering a person a private education loan that is being used to
2 refinance an existing education loan, a private education lender shall provide the person a
3 disclosure that the benefits and protections applicable to the existing loan may be lost due
4 to the refinancing.

5 **3. Form of and access to information and disclosure.** A private education lender
6 shall provide the information disclosure required by subsections 1 and 2 on a one-page
7 information sheet in 12-point type written in simple, clear, understandable and easily
8 readable language. A private education lender shall provide a cosigner with access to all
9 documents or records related to a cosigned private education loan that is available to the
10 borrower. If a private education lender provides electronic access to a document or record
11 to a borrower of a cosigned private education loan, the lender shall provide equivalent
12 access to the cosigner.

13 **§16-103. Cosigner release**

14 **1. Annual written notice.** A private education lender shall adopt administrative,
15 nonjudgmental criteria for cosigner release. A private education lender shall provide the
16 borrower and the cosigner of a cosigned private education loan an annual written notice
17 containing information about cosigner release, including the criteria the lender requires to
18 approve cosigner release and the process for applying for cosigner release.

19 **2. Written notification of eligibility for release.** If the borrower of a cosigned private
20 education loan has met the applicable payment requirement to be eligible for cosigner
21 release and the borrower or cosigner has elected to receive electronic communications from
22 the lender, the lender shall send the borrower and the cosigner a written notification by mail
23 and, if the borrower or cosigner has elected to receive electronic communications from the
24 lender, by e-mail informing the borrower and cosigner that the payment requirement to be
25 eligible for cosigner release has been met. The notification must also include information
26 about any additional criteria to qualify for cosigner release and the procedure to apply for
27 cosigner release.

28 **3. Incomplete cosigner release application.** If an application by a borrower of a
29 cosigned private education loan for cosigner release is incomplete, the private education
30 lender shall provide written notice to the borrower that the application is incomplete. The
31 written notice must include a description of the information needed to consider the
32 application complete and the date by which the missing information must be received by
33 the lender.

34 **4. Approval or denial of application for cosigner release.** Within 30 days after a
35 borrower of a cosigned private education loan submits a completed application for cosigner
36 release, the private education lender shall send the borrower and cosigner a written notice
37 that informs the borrower and cosigner whether the cosigner release application has been
38 approved or denied. If the lender denies a request for cosigner release, the borrower may
39 request any documents or information used in the determination, including, but not limited
40 to, the credit score threshold used by the lender, the borrower's consumer report, the
41 borrower's credit score and any other documents specific to the borrower. The lender shall
42 also provide any adverse action notices required under applicable federal law if the denial
43 is based in whole or in part on any information contained in a consumer report.

1 **5. Request for cosigner release.** In response to a written or oral request for cosigner
2 release, a private education lender shall provide the requestor information detailing the
3 criteria to qualify for cosigner release and the procedure to apply for cosigner release.

4 **6. Prohibition on restriction from cosigner release.** A private education lender may
5 not impose any restriction that permanently bars a borrower of a cosigned private education
6 loan from qualifying for cosigner release, including restricting the number of times the
7 borrower may apply for cosigner release.

8 **7. Prohibition on negative consequences.** A private education lender may not
9 impose any negative consequences on any borrower or cosigner of a cosigned private
10 education loan during the 60 days following the issuance of the notice under subsection 3
11 or until the lender makes a final determination about a borrower's cosigner release
12 application, whichever is earlier. For the purpose of this subsection, "negative
13 consequences" includes, but is not limited to, the imposition of additional cosigner release
14 eligibility criteria, negative credit reporting, lost eligibility for cosigner release, late fees,
15 interest capitalization and other financial injury.

16 **8. Consecutive on-time payments.** For a loan made after the effective date of this
17 section, a private education lender may not require more than 12 consecutive on-time
18 payments as criteria for cosigner release. A borrower of a cosigned private education loan
19 who has paid the equivalent of 12 months of principal and interest payments within any
20 12-month period satisfies the consecutive on-time payment requirement, regardless of
21 whether the borrower has made payments monthly during the 12-month period.

22 **9. Change in terms.** If a borrower or cosigner of a cosigned private education loan
23 requests a change in terms of the loan that restarts the count of consecutive on-time
24 payments required for cosigner release, the private education lender shall notify the
25 borrower and cosigner in writing of an adverse effect of the change and provide the
26 borrower or cosigner the right to withdraw or reverse the request to avoid that adverse
27 effect.

28 **10. Appeal of denial.** A borrower of a cosigned private education loan has the right
29 to request an appeal of a private education lender's determination to deny a request for
30 cosigner release and the lender shall permit the borrower to submit additional
31 documentation evidencing the borrower's ability, willingness and stability to meet the
32 payment obligations. The borrower may request review of the cosigner release
33 determination by another employee of the private education lender.

34 **11. Comprehensive record management system.** A private education lender shall
35 establish and maintain a comprehensive record management system designed to reasonably
36 ensure the accuracy, integrity and completeness of data and other information about
37 cosigner release applications and to ensure compliance with applicable state and federal
38 laws, including but not limited to the federal Equal Credit Opportunity Act and the federal
39 Fair Credit Reporting Act. The system required by this subsection must include the number
40 of cosigner release applications received by the lender, the approval and denial rate and the
41 primary reasons for any denial.

42 **§16-104. Disability; discharge of liability**

43 **1. Notification of total and permanent disability.** A private education lender, when
44 notified of the total and permanent disability of a borrower or cosigner of a cosigned private

1 education loan, shall release a cosigner from the obligations of the cosigner under the loan.
2 The lender may not attempt to collect a payment from a cosigner following a notification
3 of total and permanent disability of a cosigner or borrower. A private education lender
4 shall, when notified of the total and permanent disability of a borrower, discharge the
5 liability of the borrower and cosigner on the loan.

6 **2. Notification of release.** If either a cosigner or a borrower is released from the
7 obligations of a cosigned private education loan under this section, the private education
8 lender shall notify the borrower and cosigner within 30 days of the release.

9 **3. Legal authority to act on behalf of borrower.** A private education lender that
10 extends a cosigned private education loan shall provide the borrower an option to designate
11 an individual to have the legal authority to act on behalf of the borrower with respect to the
12 private education loan in the event of the total and permanent disability of the borrower.

13 **4. Cosigner release.** If a cosigner is released from the obligations of a cosigned
14 private education loan pursuant to subsection 1, the private education lender may not
15 require the borrower to obtain another cosigner on the loan.

16 **5. Prohibition on default or acceleration of loan.** A private education lender may
17 not declare a default or accelerate the debt against a borrower on the sole basis of a cosigner
18 release under subsection 1.

19 **6. Prohibited activities after notice of disability of borrower.** After receiving a
20 notification of a borrower's total and permanent disability under subsection 1, the private
21 education lender may not:

22 A. Attempt to collect on the outstanding liability of the borrower or cosigner; or

23 B. Monitor the disability status of the borrower at any point after the date of discharge
24 of liability.

25 **§16-105. Availability of alternative repayment options**

26 **1. Flexible repayment option.** If a private education lender offers a borrower a
27 flexible repayment option in connection with a private education loan, the private education
28 lender shall make the flexible repayment option available to all borrowers by the lender.

29 **2. Other alternative repayment options.** If a private education lender offers
30 alternative repayment options other than flexible repayment options, the lender shall
31 consistently present and offer the alternative repayment options to borrowers with similar
32 financial circumstances.

33 **3. Policies and procedures.** A private education lender shall:

34 A. Provide on its publicly accessible website a description of any alternative
35 repayment options under this section offered by the lender for private education loans;
36 and

37 B. Establish consistently implemented policies and procedures to evaluate private
38 education loan alternative repayment options requests, including providing accurate
39 information regarding any private education loan alternative repayment options that
40 may be available to a borrower of a private education loan through the promissory note
41 or that may have been marketed to the borrower.

42 **§16-106. Record retention**

1 A private education lender shall establish and maintain records and permit the
2 superintendent to access and copy any records required to be maintained pursuant to this
3 Article. The private education lender shall retain a loan file, including any record specified
4 for retention by rules adopted by the superintendent, for at least 6 years after the termination
5 of the loan account.

6 **§16-107. Prohibition on acceleration of private education loans**

7 **1. Prohibition on acceleration.** A private education loan executed after the effective
8 date of this section may not include a provision that permits the private education lender to
9 accelerate, in whole or in part, payments on the private education loan, except in cases of
10 payment default. A lender may not place any private education loan or account into default
11 or accelerate a private education loan for any reason, other than for payment default.

12 **2. Private education loans executed prior to effective date of section.** For a private
13 education loan executed prior to the effective date of this section:

14 A. The loan may permit the private education lender to accelerate payments only if the
15 promissory note or loan agreement explicitly authorizes an acceleration and only for
16 the reasons stated in the note or agreement;

17 B. If a cosigner of the private education loan dies, the lender may not attempt to collect
18 against the cosigner's estate other than for payment default;

19 C. Upon receiving notification of the death or bankruptcy of a cosigner of the loan, if
20 the loan is not more than 60 days delinquent at the time of the notification, the private
21 education lender may not change any terms or benefits under the promissory note,
22 repayment schedule, repayment terms or monthly payment amount or any other
23 provision associated with the loan; and

24 D. The private education lender may not place the loan or account into default or
25 accelerate payments on a loan while a borrower is seeking a loan modification or
26 enrollment in an alternative repayment plan, except that the lender may place a loan or
27 account into default or accelerate a loan for payment default 90 days following the
28 borrower's default.

29 **§16-108. Requirements for collecting on private education loan debt**

30 **1. Private education loan collection.** This section applies to a private education loan
31 collection action that is maintained by a private education lender or a private education
32 loan collector.

33 **2. Initial collection communication with borrower.** In addition to any other
34 information required under applicable federal or state law, a private education loan
35 collector shall provide in the first collection communication with the borrower, and at any
36 other time the borrower requests, the information listed under subsection 4.

37 **3. Initiation of action.** A private education lender or a private education loan collector
38 may not initiate a private education loan collection action unless the private education
39 lender or private education loan collector possesses all of the information listed under
40 subsection 4.

41 **4. Information required.** A private education lender or a private education loan
42 collector shall introduce the following information as evidence in a private education loan
43 collection action:

- 1 A. The name of the owner of the private education loan;
2 B. The original creditor's name at the time of default, if applicable;
3 C. If the original creditor used an account number to identify the private education loan
4 at the time of default, the original creditor's account number used to identify the private
5 education loan at the time of default;
6 D. The amount due at default;
7 E. An itemization of interest and fees, if any, incurred after default and claimed to be
8 owed and whether the interest and fees were imposed by the original creditor or any
9 subsequent owners of the private education loan;
10 F. The date the private education loan was executed;
11 G. The date of the first partial payment or the date of the first missed payment,
12 whichever is earlier;
13 H. The date and amount of the last payment, if applicable;
14 I. Any payments, settlement or financial remuneration of any kind paid to the creditor
15 by a guarantor, cosigner or surety and the amount of payment received;
16 J. A copy of a self-certification form and any other needs analysis conducted by the
17 original creditor prior to execution of the loan;
18 K. The names of all persons that owned the private education loan after the time of
19 default, if applicable, and the date of each sale or transfer;
20 L. A log of all collection attempts made in the last 12 months including the date and
21 time of all calls and written communications;
22 M. A statement as to whether the creditor is willing to renegotiate the terms of the loan;
23 N. Copies of all settlement documents made in the last 12 months or a statement that
24 the creditor has not attempted to settle or otherwise renegotiate the loan prior to the
25 private education loan collection action;
26 O. Documentation establishing that the creditor is the owner of the private education
27 loan at issue. If the private education loan was assigned more than once, the creditor
28 must introduce as evidence each assignment or other writing evidencing the transfer of
29 ownership of the specific individual private education loan to establish an unbroken
30 chain of ownership, beginning with the original creditor to the first subsequent creditor
31 and each additional creditor. Each assignment or other writing evidencing transfer of
32 ownership or the right to collect must contain the original creditor's account number,
33 redacted for security purposes to show only the last 4 digits, of the private education
34 loan purchased or otherwise assigned, must contain the date of purchase and
35 assignment and must clearly show the borrower's correct name associated with the
36 original account number. The assignment or other writing attached must be the
37 assignment or other writing by which the creditor or other assignee acquired the private
38 education loan and not a document prepared for litigation;
39 P. A copy of all pages of the contract, application or other documents evidencing the
40 borrower's liability for the private education loan, stating all terms and conditions
41 applicable to the private education loan. If a signed writing evidencing the original
42 private education loan does not exist, a copy of a document provided to the borrower

1 before default demonstrating that the private education loan was incurred by the
2 borrower and including all terms and conditions applicable to the private education
3 loan must be introduced as evidence; and

4 Q. An affidavit stating that a representative of the creditor personally reviewed for
5 factual accuracy the evidence under this subsection submitted to the court and
6 confirmed the factual accuracy of the allegations set forth in the complaint and any
7 supporting affidavits or affirmations filed with the court, as well as the accuracy of any
8 notarizations contained in the supporting documents filed in the action.

9 **5. Statute of limitations.** In addition to any other requirement of law or rule, a court
10 may not enter a judgment in favor of a private education lender or a private education loan
11 collector unless the court finds that the applicable statute of limitations for the action on
12 the private education loan owned by the creditor has not expired.

13 **6. Judgment.** In addition to any other requirement of law or rule, a court may not enter
14 a judgment in favor of a private education lender or a private education loan collector in a
15 collection action under this section unless the private education lender or private education
16 loan collector introduces the evidence under subsection 4 in accordance with applicable
17 rules of evidence.

18 **7. Violation.** Failure to produce to a borrower upon request any documentation
19 described in subsection 4 is a violation of the Maine Unfair Trade Practices Act.

20 **§16-109. Violations**

21 **1. Fine.** The superintendent may impose a fine of up to \$25,000 on a person for any
22 violation of this Article. Each violation of this Article or of any rule adopted pursuant to
23 section 16-110 is a separate offense for the purposes of this section.

24 **2. Suspended from operating in State.** If the superintendent finds that a person has
25 knowingly violated any provision of this Article and the violation caused financial harm to
26 a student, the superintendent may suspend the person from operating as or bar the person
27 from being a stockholder, officer, director, partner, owner or employee of a student
28 financing company for a period of up to 10 years.

29 **3. Crime.** A violation of this Article is a Class E crime.

30 **4. Private right of action.** A person who suffers damage as a result of the failure of
31 another person to comply with this Article may bring an action against the other person for
32 any of the following:

33 A. Actual damages or \$500, whichever is greater;

34 B. An order enjoining the methods, acts or practices;

35 C. Restitution of property;

36 D. Punitive damages;

37 E. Attorney's fees; and

38 F. Any other relief that the court determines proper.

39 **§16-110. Rules**

