

PROPOSED AMENDMENT to LD 1645,
**An Act To Establish Protections for Private Student Loan Borrowers
and a Registry of Lenders**

Amend the bill as follows (changes shown in red):

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

ARTICLE 15

PRIVATE STUDENT LENDER REGISTRY

§15-101. Definitions

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

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

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

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

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

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

3. Student financing company. "Student financing company" means a person engaged in the business of making or extending credit to a student for postsecondary education expenses or a holder of debt or obligation owned or incurred by a student to finance postsecondary education expenses, except for the Finance Authority of Maine when extending credit for postsecondary education expenses or guaranteeing that credit. Only to ~~To~~ the extent that state regulation is preempted by federal law, "student financing company" does not include:

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

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

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

4. Superintendent. With respect to student financing companies that are state-chartered banks or state-chartered credit unions, "superintendent" means the Superintendent of Financial Institutions within the Department of Professional and Financial Regulation. For all other student financing companies, "superintendent" means the Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation.

§15-102. Private student lender registry

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

A. Registers with the superintendent under rules or procedures adopted by the superintendent, including paying a fee of no less than \$500 per annum; and

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

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

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

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

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

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

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C. The Superintendent of Financial Institutions shall share all information received pursuant to paragraph B with the Superintendent of Consumer Credit Protection.

D. Any person licensed pursuant to section 2-302 may not be required to register under this section, but must provide the information required by subparagraph B to the superintendent.

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

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

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

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

For purposes of the publicly available website, the Superintendent of Financial Institutions and the Superintendent of Consumer Credit Protection shall combine information into a single, unified database.

§15-103. Violations

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

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

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

4. Private right of action. A student finance company who fails to comply with this Article shall be liable to any person or class of persons obligated on such student financing contract for who suffers damage as a result of the failure of another person to

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comply with this Article may bring an action against the other person for any of the following:

- A. Actual damages or \$500, whichever is greater;
- B. An order enjoining the methods, acts or practices;
- C. Restitution of property;
- D. Punitive damages;
- E. Attorney's fees; and
- F. Any other relief that the court determines proper, including rendering the contract between the person and the student finance company void and unenforceable.

§15-104. Rules

The superintendent shall may adopt rules to carry out the purposes of this Article. Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 9-A MRSA Art. 16 is enacted to read:

ARTICLE 16

PRIVATE EDUCATION LENDING

§16-101. Definitions

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

1. Cosigner. "Cosigner" means an individual who is liable for the loan obligation of another, regardless of how the individual is designated in the loan contract or instrument with respect to that obligation, including an obligation under a private education loan extended to consolidate a borrower's preexisting private education loan. "Cosigner" includes an individual whose signature is requested as a condition to grant credit or forbear a collection. "Cosigner" does not include a spouse of a borrower or cosigner where the signature is needed solely to perfect the security interest in a loan.

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2. Cosigner release. "Cosigner release" means the release of the obligations of a cosigner on a private education loan.

3. Creditor. "Creditor" means:

A. The original creditor of a private education loan if ownership of the loan has not been sold, assigned or transferred;

B. A person that owns a private education loan at the time the private education loan is defaulted if the loan has not been subsequently sold, transferred or assigned, regardless of whether the person is the original creditor; or

C. A person that purchases a defaulted private education loan for collection purposes, regardless of whether the person collects on the loan itself, hires a 3rd party for collection or hires an attorney for collection litigation.

4. Original creditor. "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.

5. Private education lender. "Private education lender" or "lender" means any person engaged in the business of securing, making or extending private education loans or any holder of a private education loan, except for the Finance Authority of Maine when securing, making or extending private education loans. Only to the extent that state regulation is preempted by federal law, "private education lender" does not include the following persons:

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

B. Any wholly owned subsidiary of a federally chartered bank or credit union;
and

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

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

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

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

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

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

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

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

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

9-A. Supervised lender. "Supervised lender" means a supervised lender as defined in section 1-301, subsection 39.

9-B. Supervised private education lender. "Supervised private education lender" means a person authorized to make or take assignment of or to service private education loans, either under a supervised lender license issued by the superintendent under section 2-301 or as a supervised financial institution.

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

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

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

§16-101-A Lender license required

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Unless a person is a supervised financial organization, a financial institution holding company as defined in Title 9-B, section 1101, subsection 1 or a mutual holding company as defined in Title 9-B, section 1052, subsection 2 or has first obtained a license pursuant to this Act from the administrator authorizing the person to make, hold or service supervised loans, the person may not engage in the business of securing, making or extending private education loans or holding private education loans.

§16-102. Cosigned private education loan

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

- A. How the private education loan will appear on the cosigner's credit report;
- B. How the cosigner will be notified if the private education loan becomes delinquent, and how the cosigner can cure a delinquency to avoid negative credit reporting and loss of cosigner release eligibility; and
- C. Eligibility criteria for cosigner release, including the number of on-time payments and any other criteria required to approve the cosigner release.

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

3. Form of and access to information and disclosure. A private education lender shall provide the information disclosure required by subsections 1 and 2 on a one-page information sheet in 12-point type written in simple, clear, understandable and easily readable language. A private education lender shall provide a cosigner with access to all documents or records related to a cosigned private education loan that is available to the borrower. If a private education lender provides electronic access to a document or record to a borrower of a cosigned private education loan, the lender shall provide equivalent access to the cosigner. Upon written request of the borrower or cosigner, the lender may withhold individual contact information from the other party.

§16-103. Cosigner release

1. Annual written notice. A private education lender shall ~~adopt~~ inform the borrower and cosigner of all administrative, nonjudgmental criteria required for cosigner release. A private education lender shall provide the borrower and the cosigner of a cosigned private education loan an annual written notice containing information about

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cosigner release, including the criteria the lender requires to approve cosigner release and the process for applying for cosigner release.

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

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

4. Approval or denial of application for cosigner release. Within 30 days after a borrower of a cosigned private education loan submits a completed application for cosigner release, the private education lender 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 lender 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 lender, the borrower's consumer credit report, the borrower's credit score and any other documents specific to the borrower. The lender 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.

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

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

7. Prohibition on negative consequences. A private education lender may not impose any negative consequences on any borrower or cosigner of a cosigned

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private education loan during the 60 days following the issuance of the notice under subsection 3 or until the lender makes a final determination about a borrower's cosigner release application, whichever is earlier. For the purpose of this subsection, "negative consequences" includes, but is not limited to, the imposition of additional cosigner release eligibility criteria, negative credit reporting, lost eligibility for cosigner release, late fees, interest capitalization and other financial injury.

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

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

10. Appeal of denial. A borrower of a cosigned private education loan has the right to request an appeal of a private education lender's determination to deny a request for cosigner release and the lender 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 review of the cosigner release determination by another employee of the private education lender.

11. Comprehensive record management system. A private education lender shall establish and maintain a comprehensive record management system designed to reasonably 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 federal Equal Credit Opportunity Act and the federal Fair Credit Reporting Act. The system required by this subsection must include the number of cosigner release applications received by the lender, the approval and denial rate and the primary reasons for any denial.

§16-104. Disability; discharge of liability

1. Notification of total and permanent disability. A private education lender, when notified of the total and permanent disability of a borrower or cosigner of a cosigned private education loan, shall release a cosigner from the obligations of the cosigner under the loan. The lender may not attempt to collect a payment from a

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cosigner following a notification of total and permanent disability of a cosigner or borrower. A private education lender shall, when notified of the total and permanent disability of a borrower, discharge the liability of the borrower and cosigner on the loan.

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

3. Legal authority to act on behalf of borrower. A private education lender that extends a cosigned private education loan 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 private education loan in the event of the total and permanent disability of the borrower.

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

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

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

- A. Attempt to collect on the outstanding liability of the borrower or cosigner; or
- B. Monitor the disability status of the borrower at any point after the date of discharge of liability.

§16-105. Availability of alternative repayment options

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

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

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

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

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

§16-106. Record retention

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

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

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

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

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

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

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

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

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

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

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

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

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

A. The name of the owner of the private education loan;

B. The original creditor's name at the time of default, if applicable;

C. If the original creditor used an account number to identify the private education loan at the time of default, the original creditor's account number used to identify the private education loan at the time of default;

D. The amount due at default;

E. An itemization of interest and fees, if any, incurred after default and claimed to be owed and whether the interest and fees were imposed by the original creditor or any subsequent owners of the private education loan;

F. The date the private education loan was executed;

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G. The date of the first partial payment or the date of the first missed payment, whichever is earlier;

H. The date and amount of the last payment, if applicable;

I. Any payments, settlement or financial remuneration of any kind paid to the creditor by a guarantor, cosigner or surety and the amount of payment received;

J. A copy of a self-certification form and any other needs analysis conducted by the original creditor prior to execution of the loan;

K. The names of all persons that owned the private education loan after the time of default, if applicable, and the date of each sale or transfer;

L. A log of all collection attempts made in the last 12 months including the date and time of all calls and written communications;

M. A statement as to whether the creditor is willing to renegotiate the terms of the loan;

N. Copies of all settlement documents made in the last 12 months or a statement that the creditor has not attempted to settle or otherwise renegotiate the loan prior to the private education loan collection action;

O. Documentation establishing that the creditor is the owner of the private education loan at issue. If the private education loan was assigned more than once, the creditor must introduce as evidence each assignment or other writing evidencing the transfer of ownership of the specific individual private education loan to establish an unbroken chain of ownership, beginning with the original creditor to the first subsequent creditor and each additional creditor. Each assignment or other writing evidencing transfer of ownership or the right to collect must contain the original creditor's account number, redacted for security purposes to show only the last 4 digits, of the private education loan purchased or otherwise assigned, must contain the date of purchase and assignment and must clearly show the borrower's correct name associated with the original account number. The assignment or other writing attached must be the assignment or other writing by which the creditor or other assignee acquired the private education loan and not a document prepared for litigation;

P. A copy of all pages of the contract, application or other documents evidencing the borrower's liability for the private education loan, stating all terms and conditions applicable to the private education loan. If a signed writing evidencing the original private education loan does not exist, a copy of a document provided to the borrower before default demonstrating that the private education loan was

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incurred by the borrower and including all terms and conditions applicable to the private education loan must be introduced as evidence; and

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

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

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

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

§16-109. Violations

0-A. Authority of superintendent The superintendent shall receive and act on complaints, take action designed to obtain voluntary compliance with this Article, conduct examinations and investigations and employ other enforcement powers granted pursuant to Article VI.

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

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

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

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

- A. Actual damages or \$500, whichever is greater;
- B. An order enjoining the methods, acts or practices;
- C. Restitution of property;
- D. Punitive damages;
- E. Attorney's fees; and
- F. Any other relief that the court determines proper.

§16-110. Rules

The superintendent shall **may** adopt rules to carry out the purposes of this Article. Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill directs that private lenders of postsecondary education financing to students for expenses related to postsecondary education, regardless of whether the education is provided by businesses authorized to do business in or accredited by the State, register with **the Superintendent of Financial Institutions** or the Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation and for the superintendent to publish a registry of the private lenders on a publicly accessible website. This bill affords cosigners of private student financing the same rights and protections afforded the primary student borrowers of private student financing. This bill provides for fines, suspension from operating in the State, criminal liability for and private rights of action against lenders of private student financing that violate the provisions of the bill.

This bill also contains provisions for private education lenders to provide information and disclosures to borrowers and cosigners of private education loans, provisions to allow a cosigner to be released from obligations under a private education loan, the discharge of the loan or release of a cosigner if the borrower or cosigner dies or suffers a total and permanent disability, provisions regarding alternative repayment options, prohibitions on accelerating loan payments under most conditions and requirements for the collection of delinquent private education loans. **This bill requires a**

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private education lender to obtain a supervised lender license before securing, making or extending private education loans or holding private education loans.

Fiscal note: Revenue to the Bureau of Consumer Credit Protection will increase through license and compliance examination fees as a result of private education lenders obtaining supervised lender licenses. The amount of that increase is dependent on the number of private education lenders that obtain supervised lender licenses. The Bureau of Consumer Credit Protection will also incur expenses, in that private education lender oversight will require a full-time supervisory position, who will process license applications, schedule and conduct compliance examinations, monitor compliance with cosigner release requirements, monitor compliance with requirements for discharge in the event of total and permanent disability of the borrower or the cosigner of a private education loan, monitor compliance with the requirements for alternative repayment options, monitor compliance with prohibitions on acceleration, monitor compliance with collection standards, and promulgate any necessary rules. The Bureau of Consumer Credit Protection can absorb any costs of this position that are not covered by the increased revenue from supervised lender licensing and compliance examination reimbursement.

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