

HOUSE BILL 111

D3, F2, I3
HB 26/21 – APP & JUD

(PRE-FILED)

2lr0815

By: **Delegate Lopez**

Requested: October 19, 2021

Introduced and read first time: January 12, 2022

Assigned to: Appropriations and Judiciary

A BILL ENTITLED

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 unless the private education lenders or
5 private education loan collectors possess certain documents; requiring a private
6 education lender or private education loan collector to introduce certain information
7 in a certain action; requiring a private education loan collector to provide certain
8 information to a student loan borrower in a certain communication and on request
9 of the student loan borrower; and generally relating to documents required in an
10 action to collect a private education loan.

11 BY adding to

12 Article – Courts and Judicial Proceedings

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

15 Annotated Code of Maryland

16 (2020 Replacement Volume and 2021 Supplement)

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

19 **Article – Courts and Judicial Proceedings**

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

21 **5–1301.**

22 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
23 **INDICATED.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(B) (1) “COSIGNER” MEANS AN INDIVIDUAL WHO IS LIABLE FOR THE**
2 **OBLIGATION OF ANOTHER WITHOUT COMPENSATION, REGARDLESS OF HOW THE**
3 **INDIVIDUAL IS DESIGNATED IN THE AGREEMENT WITH RESPECT TO THAT**
4 **OBLIGATION.**

5 **(2) “COSIGNER” INCLUDES:**

6 **(I) AN INDIVIDUAL WHO IS LIABLE FOR AN OBLIGATION UNDER**
7 **A PRIVATE EDUCATION LOAN EXTENDED TO CONSOLIDATE A BORROWER’S**
8 **PREEXISTING PRIVATE EDUCATION LOANS; AND**

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

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

13 **(C) (1) “CREDITOR” MEANS:**

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

16 **(II) THE PERSON, NONDEPOSITORY INSTITUTION, OR TRUST**
17 **ENTITY THAT OWNED THE PRIVATE EDUCATION LOAN AT THE TIME THE PRIVATE**
18 **EDUCATION LOAN DEFAULTED, EVEN IF THE PERSON, NONDEPOSITORY**
19 **INSTITUTION, OR TRUST ENTITY DID NOT ORIGINATE THE PRIVATE EDUCATION**
20 **LOAN IF THE PRIVATE EDUCATION LOAN WAS NOT SUBSEQUENTLY SOLD,**
21 **TRANSFERRED, OR ASSIGNED; OR**

22 **(III) A PERSON, NONDEPOSITORY INSTITUTION, OR TRUST**
23 **ENTITY THAT PURCHASED A DEFAULTED PRIVATE EDUCATION LOAN FOR**
24 **COLLECTION PURPOSES, REGARDLESS OF WHETHER THE PERSON, NONDEPOSITORY**
25 **INSTITUTION, OR TRUST ENTITY:**

26 **1. COLLECTED THE PRIVATE EDUCATION LOAN;**

27 **2. HIRED A THIRD PARTY TO COLLECT THE PRIVATE**
28 **EDUCATION LOAN; OR**

29 **3. HIRED AN ATTORNEY FOR COLLECTION LITIGATION.**

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

1 (I) A BANK AS DEFINED IN THE FEDERAL DEPOSIT INSURANCE
2 ACT; OR

3 (II) A FEDERAL CREDIT UNION OR STATE CREDIT UNION AS
4 THOSE TERMS ARE DEFINED IN THE FEDERAL CREDIT UNION ACT.

5 (D) "ORIGINAL CREDITOR" MEANS THE PRIVATE EDUCATION LENDER
6 IDENTIFIED IN THE PROMISSORY NOTE, LOAN AGREEMENT, OR LOAN CONTRACT
7 ENTERED INTO WITH A STUDENT LOAN BORROWER OR COSIGNER.

8 (E) (1) "PRIVATE EDUCATION LENDER" MEANS:

9 (I) A PERSON, NONDEPOSITORY INSTITUTION, OR TRUST
10 ENTITY ENGAGED IN THE BUSINESS OF SECURING, MAKING, OR EXTENDING PRIVATE
11 EDUCATION LOANS; OR

12 (II) A HOLDER OF A PRIVATE EDUCATION LOAN.

13 (2) "PRIVATE EDUCATION LENDER" DOES NOT INCLUDE:

14 (I) A BANK AS DEFINED IN THE FEDERAL DEPOSIT INSURANCE
15 ACT; OR

16 (II) A FEDERAL CREDIT UNION OR STATE CREDIT UNION AS
17 THOSE TERMS ARE DEFINED IN THE FEDERAL CREDIT UNION ACT.

18 (F) "PRIVATE EDUCATION LOAN" MEANS AN EXTENSION OF CREDIT THAT:

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

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

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

26 (4) DOES NOT INCLUDE AN EXTENSION OF CREDIT IN WHICH THE
27 COVERED INSTITUTION IS THE CREDITOR IF:

28 (I) THE TERM OF THE EXTENSION OF CREDIT IS NOT MORE
29 THAN 90 DAYS; OR

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

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

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

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

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

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

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

16 **5-1302.**

17 **(A) A PRIVATE EDUCATION LENDER OR A PRIVATE EDUCATION LOAN**
18 **COLLECTOR MAY NOT INITIATE A PRIVATE EDUCATION LOAN COLLECTION ACTION**
19 **UNLESS THE PRIVATE EDUCATION LENDER OR PRIVATE EDUCATION LOAN**
20 **COLLECTOR POSSESSES ALL OF THE DOCUMENTS DESCRIBED UNDER SUBSECTION**
21 **(B)(3) OF THIS SECTION.**

22 **(B) (1) THIS SUBSECTION APPLIES:**

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

27 **(II) REGARDLESS OF THE LEGAL STATUS OF THE TRUST’S**
28 **TRUSTEE.**

29 **(2) IN ADDITION TO ANY OTHER PROVISION OF LAW, A COURT MAY**
30 **NOT ENTER A JUDGMENT IN FAVOR OF A PRIVATE EDUCATION LENDER OR A**
31 **PRIVATE EDUCATION LOAN COLLECTOR UNLESS THE PRIVATE EDUCATION LENDER**
32 **OR PRIVATE EDUCATION LOAN COLLECTOR INTRODUCES INTO EVIDENCE THE**

1 DOCUMENTS SPECIFIED IN PARAGRAPH (3) OF THIS SUBSECTION IN ACCORDANCE
2 WITH THE RULES OF EVIDENCE APPLICABLE TO ACTIONS THAT ARE NOT SMALL
3 CLAIMS ACTIONS BROUGHT UNDER § 4-405 OF THIS ARTICLE.

4 (3) THE PRIVATE EDUCATION LENDER OR PRIVATE EDUCATION LOAN
5 COLLECTOR SHALL INTRODUCE THE FOLLOWING EVIDENCE IN A PRIVATE
6 EDUCATION LOAN COLLECTION ACTION:

7 (I) THE NAME OF THE OWNER OF THE PRIVATE EDUCATION
8 LOAN;

9 (II) THE ORIGINAL CREDITOR'S NAME AT THE TIME OF
10 DEFAULT, IF APPLICABLE;

11 (III) IF THE ORIGINAL CREDITOR USED AN ACCOUNT NUMBER AT
12 THE TIME OF DEFAULT, THE LAST FOUR DIGITS OF THE ORIGINAL CREDITOR'S
13 ACCOUNT NUMBER;

14 (IV) THE AMOUNT DUE AT DEFAULT;

15 (V) AN ITEMIZATION OF INTEREST AND FEES, IF ANY,
16 INCURRED AFTER DEFAULT THAT ARE CLAIMED TO BE OWED AND WHETHER THE
17 INTEREST AND FEES WERE IMPOSED BY THE ORIGINAL CREDITOR OR BY
18 SUBSEQUENT OWNERS OF THE PRIVATE EDUCATION LOAN;

19 (VI) A RECORD OF THE DATE THAT THE PRIVATE EDUCATION
20 LOAN WAS INCURRED;

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

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

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

28 (X) A COPY OF THE SELF-CERTIFICATION FORM AND ANY
29 OTHER NEEDS ANALYSIS CONDUCTED BY THE ORIGINAL CREDITOR BEFORE THE
30 ORIGINATION OF THE LOAN, REDACTED TO WITHHOLD THE STUDENT LOAN
31 BORROWER'S SOCIAL SECURITY NUMBER, ALL BUT THE LAST FOUR DIGITS OF THE
32 STUDENT LOAN BORROWER'S ACCOUNT NUMBER, AND ANY OTHER PERSONAL
33 IDENTIFYING INFORMATION;

1 **(XI) IF APPLICABLE, THE NAMES OF ALL PERSONS THAT OWNED**
2 **THE PRIVATE EDUCATION LOAN AFTER THE TIME OF DEFAULT AND THE DATE OF**
3 **EACH SALE OR TRANSFER OF THE LOAN;**

4 **(XII) A RECORD OF ALL COLLECTION ATTEMPTS MADE IN THE**
5 **IMMEDIATELY PRECEDING 12 MONTHS, INCLUDING THE DATE AND TIME OF ALL**
6 **COMMUNICATIONS, IF APPLICABLE;**

7 **(XIII) A STATEMENT BY THE CREDITOR INDICATING WHETHER**
8 **THE CREDITOR IS WILLING TO RENEGOTIATE THE TERMS OF THE DEBT;**

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

14 **2. A STATEMENT THAT THE CREDITOR HAS NOT**
15 **ATTEMPTED TO SETTLE OR OTHERWISE RENEGOTIATE THE DEBT BEFORE FILING**
16 **THE PRIVATE EDUCATION LOAN COLLECTION ACTION;**

17 **(XV) 1. DOCUMENTATION ESTABLISHING THAT THE**
18 **CREDITOR IS THE OWNER OF THE SPECIFIC INDIVIDUAL PRIVATE EDUCATION LOAN**
19 **AT ISSUE; AND**

20 **2. IF THE PRIVATE EDUCATION LOAN WAS ASSIGNED**
21 **MORE THAN ONCE, A RECORD OF EACH ASSIGNMENT OR OTHER WRITING, NOT**
22 **INCLUDING A WRITING PREPARED IN ANTICIPATION OF LITIGATION, INDICATING**
23 **THE TRANSFER OF OWNERSHIP OF THE INDIVIDUAL PRIVATE EDUCATION LOAN**
24 **BEGINNING WITH THE ORIGINAL CREDITOR AND ENDING WITH THE MOST RECENT**
25 **ADDITIONAL CREDITOR, INCLUDING:**

26 **A. THE ORIGINAL CREDITOR'S ACCOUNT NUMBER,**
27 **REDACTED TO SHOW ONLY THE LAST FOUR DIGITS, FOR THE PRIVATE EDUCATION**
28 **LOAN PURCHASED OR OTHERWISE ASSIGNED;**

29 **B. THE DATE OF PURCHASE AND ASSIGNMENT; AND**

30 **C. THE STUDENT LOAN BORROWER'S CORRECT NAME**
31 **ASSOCIATED WITH THE ORIGINAL ACCOUNT NUMBER;**

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

4 A. STATES ALL TERMS AND CONDITIONS APPLICABLE TO
5 THE PRIVATE EDUCATION LOAN; AND

6 B. IS REDACTED TO WITHHOLD THE STUDENT LOAN
7 BORROWER'S SOCIAL SECURITY NUMBER, ALL BUT THE LAST FOUR DIGITS OF THE
8 STUDENT LOAN BORROWER'S ACCOUNT NUMBER, AND ANY OTHER PERSONAL
9 IDENTIFYING INFORMATION; OR

10 2. IF A SIGNED CONTRACT, APPLICATION, OR OTHER
11 DOCUMENT EVIDENCING THE STUDENT LOAN BORROWER'S LIABILITY DOES NOT
12 EXIST, A COPY OF A DOCUMENT PROVIDED TO THE STUDENT LOAN BORROWER
13 BEFORE THE DEFAULT DEMONSTRATING THAT THE PRIVATE EDUCATION LOAN WAS
14 INCURRED BY THE STUDENT LOAN BORROWER THAT:

15 A. INCLUDES ALL TERMS AND CONDITIONS APPLICABLE
16 TO THE PRIVATE EDUCATION LOAN; AND

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

21 (XVII) AN AFFIDAVIT STATING THAT A REPRESENTATIVE OF THE
22 CREDITOR:

23 1. PERSONALLY REVIEWED THE EVIDENCE SUBMITTED
24 TO THE COURT IN ACCORDANCE WITH THIS SUBSECTION FOR FACTUAL ACCURACY;
25 AND

26 2. CONFIRMED THE FACTUAL ACCURACY OF:

27 A. THE ALLEGATIONS SET FORTH IN THE COMPLAINT;

28 B. ANY SUPPORTING AFFIDAVITS OR AFFIRMATIONS
29 FILED WITH THE COURT; AND

30 C. ANY NOTARIZATIONS CONTAINED IN THE
31 SUPPORTING DOCUMENTS FILED TO THE COURT;

1 (XVIII) AN AFFIDAVIT STATING COMPLIANCE WITH § 5-1303
2 OF THIS SUBTITLE;

3 (XIX) A STATEMENT AS TO WHETHER A DEBT IS ELIGIBLE FOR AN
4 INCOME-BASED REPAYMENT PLAN;

5 (XX) A STATEMENT AS TO WHETHER THE DEBT IS ABLE TO BE
6 DISCHARGED IN BANKRUPTCY; AND

7 (XXI) AN AFFIDAVIT STATING:

8 1. THE DATE ON WHICH THE PRIVATE EDUCATION
9 LENDER OR PRIVATE EDUCATION LOAN COLLECTOR HAS A GOOD FAITH BELIEF
10 THAT THE APPLICABLE STATUTE OF LIMITATIONS WILL EXPIRE; AND

11 2. THAT THE PRIVATE EDUCATION LENDER OR PRIVATE
12 EDUCATION LOAN COLLECTOR HAS NOT INITIATED THE PRIVATE EDUCATION LOAN
13 COLLECTION ACTION AFTER THE APPLICABLE STATUTE OF LIMITATIONS HAS
14 EXPIRED.

15 5-1303.

16 (A) A PRIVATE EDUCATION LOAN COLLECTOR SHALL PROVIDE THE
17 INFORMATION DESCRIBED UNDER § 5-1302(B)(3)(I) THROUGH (XXI) OF THIS
18 SUBTITLE IN THE FIRST COLLECTION COMMUNICATION WITH THE STUDENT LOAN
19 BORROWER AND ON REQUEST OF THE STUDENT LOAN BORROWER.

20 (B) FAILURE TO PRODUCE TO A STUDENT LOAN BORROWER, ON REQUEST
21 OF THE STUDENT LOAN BORROWER, THE DOCUMENTATION DESCRIBED IN
22 SUBSECTION (A) OF THIS SECTION IS AN UNFAIR, ABUSIVE, OR DECEPTIVE TRADE
23 PRACTICE UNDER § 13-301 OF THE COMMERCIAL LAW ARTICLE.

24 5-1304.

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

28 (1) AN ORDER VACATING ANY DEFAULT JUDGMENT ENTERED
29 AGAINST THE PERSON;

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

1 **(3) ACTUAL DAMAGES IN AN AMOUNT NOT LESS THAN \$500 PER**
2 **PERSON, PER VIOLATION;**

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

5 **(5) PUNITIVE DAMAGES;**

6 **(6) ATTORNEY’S FEES;**

7 **(7) CORRECTION OF THE PERSON’S CREDIT REPORT; AND**

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

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

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2022.