



House Bill 1562 – Action to Collect a Private Education Loan – Required Documents

March 4, 2020 – House Economic Matters Committee

Favorable with Amendments

The Maryland Bankers Association (MBA) supports HB 1562 – Action to Collect a Private Education Loan – Required Documents with amendments. MBA’s members are comprised of community banks and savings and loans, regional banks and large banking companies with a national presence. The 87 banks operating in Maryland employ 26,000 men and women. Maryland’s banks serve communities, consumers and businesses across the State through nearly 1,420 branches.

According to the fiscal and policy note, this bill “prohibits a private education lender or a private education loan collector from initiating a private education loan collection action unless the lender or collector possesses (and introduces into evidence) specified documents related to the loan. Similarly, a private education loan collector must provide specified documentation in the first collection communication with the student loan borrower (and upon request of the borrower). The bill also authorizes a person that suffers damage as a result of a creditor’s failure to comply with the bill to bring an action against the creditor. Failure to produce the required documentation upon request by the borrower is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil and criminal penalty provisions.”

Federal loans are made solely and exclusively by the U. S. Government and terms, conditions and disclosure requirements for federal loans are governed by the Higher Education Act (HEA). MBA’s members make private student loans and must comply with the Truth-in-Lending Act, which sets forth very comprehensive loan origination disclosure requirements that are more vigorous than those in the HEA disclosures. We appreciate the sponsor’s desire to provide certain documents and information in initiating a collection action and have raised specific concerns about our members’ ability to provide the information contained in the bill. The bulk of the changes we are requesting are contained within proposed Section 5-1302(B)(3). These edits stem from the difficulty inherent in both retaining account-level data and accessing account-level data after the purchase of accounts from a prior lender.

Attached is a mark-up of the legislation with MBA-supported amendments which address our concerns. With these amendments, the Maryland Bankers Association supports House Bill 1562 and urges the Committee to vote favorably on the bill with the amendments.

HOUSE BILL 1562

D3, F2, I3

0lr2421

By: **Delegate Lopez**

Introduced and read first time: February 7, 2020

Assigned to: Economic Matters

A BILL ENTITLED

AN ACT concerning

Action to Collect a Private Education Loan – Required Documents

FOR the purpose of prohibiting private education lenders and private education loan collectors from initiating a certain action except under certain circumstances; prohibiting a court from entering a certain judgment unless the private education lender or private education loan collector introduces certain documents in accordance with certain rules; requiring a private education lender or private education loan collector to introduce certain information in a certain action; prohibiting a court from entering a certain judgment unless the court finds that a certain statute of limitations has not expired; requiring a private education loan collector to provide certain information to a student loan borrower ~~in a certain communication and~~ on request of the student loan borrower; ~~establishing that a failure of a private education loan collector to provide certain information to a student loan borrower under certain circumstances is an unfair, abusive, or deceptive trade practice;~~ authorizing a certain person to bring a certain action; requiring the court to award certain damages under certain circumstances; providing for the application of this Act; defining certain terms; and generally relating to documents required in an action to collect a private education loan.

BY adding to

Article – Courts and Judicial Proceedings

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

Annotated Code of Maryland

(2013 Replacement Volume and 2019 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

SUBTITLE 13. ACTION TO COLLECT A PRIVATE EDUCATION LOAN.

5-1301.

- (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.
- (B) (1) “COSIGNER” MEANS AN INDIVIDUAL WHO IS LIABLE FOR THE OBLIGATION OF ANOTHER WITHOUT COMPENSATION, REGARDLESS OF HOW THE INDIVIDUAL IS DESIGNATED IN THE AGREEMENT WITH RESPECT TO THAT OBLIGATION.
- (2) “COSIGNER” INCLUDES:
- (I) AN INDIVIDUAL WHO IS LIABLE FOR AN OBLIGATION UNDER A PRIVATE EDUCATION LOAN EXTENDED TO CONSOLIDATE A BORROWER’S PREEXISTING PRIVATE EDUCATION LOANS; AND
 - (II) AN INDIVIDUAL WHOSE SIGNATURE IS REQUESTED AS A CONDITION TO GRANT CREDIT OR TO FORBEAR ON COLLECTION.
- (3) “COSIGNER” DOES NOT INCLUDE THE SPOUSE OF AN INDIVIDUAL UNDER PARAGRAPH (1) OF THIS SUBSECTION.
- (C) “CREDITOR” MEANS:
- (1) THE ORIGINAL CREDITOR, IF OWNERSHIP OF A PRIVATE EDUCATION LOAN HAS NOT BEEN SOLD, ASSIGNED, OR TRANSFERRED;
 - (2) THE PERSON THAT OWNED THE PRIVATE EDUCATION LOAN AT THE TIME THE PRIVATE EDUCATION LOAN DEFAULTED, EVEN IF THE PERSON DID NOT ORIGINATE THE PRIVATE EDUCATION LOAN IF THE PRIVATE EDUCATION LOAN WAS NOT SUBSEQUENTLY SOLD, TRANSFERRED, OR ASSIGNED; OR
 - (3) A PERSON THAT PURCHASED A DEFAULTED PRIVATE EDUCATION LOAN FOR COLLECTION PURPOSES, REGARDLESS OF WHETHER THE PERSON:
 - (I) COLLECTED THE PRIVATE EDUCATION LOAN;
 - (II) HIRED A THIRD PARTY TO COLLECT THE PRIVATE EDUCATION LOAN; OR
 - (III) HIRED AN ATTORNEY FOR COLLECTION LITIGATION.
- (D) “ORIGINAL CREDITOR” MEANS THE PRIVATE EDUCATION LENDER IDENTIFIED IN THE PROMISSORY NOTE, LOAN AGREEMENT, OR LOAN CONTRACT ENTERED INTO WITH A STUDENT LOAN BORROWER OR COSIGNER.

- (E) “PRIVATE EDUCATION LENDER” MEANS:
- (1) A PERSON ENGAGED IN THE BUSINESS OF SECURING, MAKING, OR EXTENDING PRIVATE EDUCATION LOANS; OR
 - (2) A HOLDER OF A PRIVATE EDUCATION LOAN.
- (F) “PRIVATE EDUCATION LOAN” MEANS AN EXTENSION OF CREDIT THAT:
- (1) IS NOT MADE, INSURED, OR GUARANTEED UNDER TITLE IV OF THE HIGHER EDUCATION ACT OF 1965;
 - (2) IS EXTENDED TO A CONSUMER EXPRESSLY, WHOLLY OR PARTLY, FOR POSTSECONDARY EDUCATIONAL EXPENSES, REGARDLESS OF WHETHER THE LOAN IS PROVIDED BY THE INSTITUTION THAT THE STUDENT ATTENDS;
 - (3) DOES NOT INCLUDE OPEN-END CREDIT OR ANY LOAN THAT IS SECURED BY REAL PROPERTY OR A DWELLING; AND
 - (4) DOES NOT INCLUDE AN EXTENSION OF CREDIT IN WHICH THE COVERED INSTITUTION IS THE CREDITOR IF:
 - (I) THE TERM OF THE EXTENSION OF CREDIT IS NOT MORE THAN 90 DAYS; OR
 - (II) AN INTEREST RATE WILL NOT BE APPLIED TO THE CREDIT 21 BALANCE AND THE TERM OF THE EXTENSION OF CREDIT IS NOT MORE THAN 1 YEAR, EVEN IF THE CREDIT IS PAYABLE IN MORE THAN FOUR INSTALLMENTS.
- (G) “PRIVATE EDUCATION LOAN COLLECTION ACTION” MEANS A JUDICIAL ACTION IN WHICH A CLAIM IS ASSERTED TO COLLECT A PRIVATE EDUCATION LOAN.
- (H) “PRIVATE EDUCATION LOAN COLLECTOR” MEANS A PERSON THAT COLLECTS OR ATTEMPTS TO COLLECT ON A DEFAULTED PRIVATE EDUCATION LOAN.
- (I) “STUDENT LOAN BORROWER” MEANS AN INDIVIDUAL WHO RECEIVES OR AGREES TO PAY A PRIVATE EDUCATION LOAN.

5-1302.

- (A) 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 DOCUMENTS DESCRIBED UNDER SUBSECTION (B)(3) OF THIS SECTION.

- (B) (1) THIS SUBSECTION APPLIES TO A PRIVATE EDUCATION LOAN COLLECTION ACTION, INCLUDING A SMALL CLAIM ACTION UNDER § 4-405 OF THIS ARTICLE, THAT IS MAINTAINED BY A PRIVATE EDUCATION LENDER OR A PRIVATE EDUCATION LOAN COLLECTOR.
- (2) IN ADDITION TO ANY OTHER PROVISION OF LAW, A COURT MAY NOT ENTER A JUDGMENT IN FAVOR OF A PRIVATE EDUCATION LENDER OR A PRIVATE EDUCATION LOAN COLLECTOR UNLESS THE PRIVATE EDUCATION LENDER OR PRIVATE EDUCATION LOAN COLLECTOR INTRODUCES INTO EVIDENCE THE DOCUMENTS SPECIFIED IN PARAGRAPH (3) OF THIS SUBSECTION IN ACCORDANCE WITH THE RULES OF EVIDENCE APPLICABLE TO ACTIONS THAT ARE NOT SMALL CLAIMS ACTIONS BROUGHT UNDER § 4-405 OF THIS ARTICLE.
- (3) THE PRIVATE EDUCATION LENDER OR PRIVATE EDUCATION LOAN COLLECTOR SHALL INTRODUCE THE FOLLOWING EVIDENCE IN A PRIVATE EDUCATION LOAN COLLECTION ACTION:
- (I) THE NAME OF THE OWNER OF THE PRIVATE EDUCATION LOAN;
 - (II) THE ORIGINAL CREDITOR'S NAME ~~AT THE TIME OF DEFAULT~~, IF APPLICABLE;
 - ~~(III) IF THE ORIGINAL CREDITOR USED AN ACCOUNT NUMBER AT THE TIME OF DEFAULT, THE ORIGINAL CREDITOR'S ACCOUNT NUMBER;~~
 - (IV) THE AMOUNT DUE AT DEFAULT;
 - (V) AN ITEMIZATION OF INTEREST AND FEES, IF ANY, INCURRED AFTER DEFAULT THAT ARE CLAIMED TO BE OWED ~~AND WHETHER THE INTEREST AND FEES WERE IMPOSED BY THE ORIGINAL CREDITOR OR BY SUBSEQUENT OWNERS OF THE PRIVATE EDUCATION LOAN;~~
 - (VI) A RECORD OF THE DATE THAT THE PRIVATE EDUCATION LOAN WAS INCURRED;
 - (VII) ~~A RECORD OF THE DATE OF THE FIRST PARTIAL PAYMENT OR THE DATE THAT A PAYMENT WAS FIRST MISSED, WHICHEVER IS EARLIER;~~
 - (VIII) A RECORD OF THE DATE AND AMOUNT OF THE LAST PAYMENT, IF APPLICABLE;
 - ~~(IX) ANY PAYMENTS, SETTLEMENT, OR FINANCIAL REMUNERATION OF ANY KIND PAID TO THE CREDITOR BY A GUARANTOR, COSIGNER, OR SURETY, AND THE AMOUNT OF THE PAYMENT RECEIVED;~~
 - ~~(X) A COPY OF THE SELF-CERTIFICATION FORM AND ANY OTHER NEEDS ANALYSIS CONDUCTED BY THE ORIGINAL CREDITOR BEFORE THE ORIGINATION OF THE LOAN;~~

- (XI) IF APPLICABLE, THE NAMES OF ALL PERSONS THAT OWNED THE PRIVATE EDUCATION LOAN AFTER THE TIME OF DEFAULT AND THE DATE OF EACH SALE OR TRANSFER OF THE LOAN;
- (XII) A RECORD OF ALL TELEPHONIC COLLECTION ATTEMPTS MADE IN THE IMMEDIATELY PRECEDING 12 MONTHS, ~~INCLUDING THE DATE AND TIME OF ALL COMMUNICATIONS~~;
- (XIII) A STATEMENT BY THE CREDITOR INDICATING WHETHER THE CREDITOR IS WILLING TO RENEGOTIATE THE TERMS OF THE DEBT;
- (XIV)
 1. COPIES OF ALL WRITTEN SETTLEMENT COMMUNICATIONS MADE IN THE IMMEDIATELY PRECEDING 12 MONTHS; OR
 2. A STATEMENT THAT THE CREDITOR HAS NOT ATTEMPTED TO SETTLE OR OTHERWISE RENEGOTIATE THE DEBT BEFORE FILING THE PRIVATE EDUCATION LOAN COLLECTION ACTION;
- (XV)
 1. DOCUMENTATION ESTABLISHING THAT THE CREDITOR IS THE OWNER OF THE SPECIFIC INDIVIDUAL PRIVATE EDUCATION LOAN AT ISSUE; AND
 2. IF THE PRIVATE EDUCATION LOAN WAS ASSIGNED MORE THAN ONCE, A RECORD OF EACH ASSIGNMENT OR OTHER WRITING, NOT INCLUDING A WRITING PREPARED IN ANTICIPATION OF LITIGATION, INDICATING THE TRANSFER OF OWNERSHIP OF THE INDIVIDUAL PRIVATE EDUCATION LOAN BEGINNING WITH THE ORIGINAL CREDITOR AND ENDING WITH THE MOST RECENT ADDITIONAL CREDITOR, INCLUDING:
 - A. THE ORIGINAL CREDITOR'S ACCOUNT NUMBER, REDACTED TO SHOW ONLY THE LAST FOUR DIGITS, FOR THE PRIVATE EDUCATION LOAN PURCHASED OR OTHERWISE ASSIGNED;
 - B. THE DATE OF PURCHASE AND ASSIGNMENT; AND
 - C. THE STUDENT LOAN BORROWER'S CORRECT NAME ASSOCIATED WITH THE ORIGINAL ACCOUNT NUMBER;
- (XVI)
 1. A COPY OF ALL PAGES OF THE CONTRACT, APPLICATION, OR OTHER DOCUMENT EVIDENCING THE STUDENT LOAN BORROWER'S LIABILITY FOR THE PRIVATE EDUCATION LOAN, STATING ALL TERMS AND CONDITIONS APPLICABLE TO THE PRIVATE EDUCATION LOAN; OR
 2. IF A SIGNED CONTRACT, APPLICATION, OR OTHER DOCUMENT EVIDENCING THE STUDENT LOAN BORROWER'S LIABILITY DOES NOT EXIST, A COPY OF A DOCUMENT PROVIDED TO THE PRIVATE EDUCATION LOAN

BORROWER BEFORE THE DEFAULT DEMONSTRATING THAT THE PRIVATE EDUCATION LOAN WAS INCURRED BY THE STUDENT LOAN BORROWER, INCLUDING ALL TERMS AND CONDITIONS APPLICABLE TO THE PRIVATE EDUCATION LOAN;

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

1. PERSONALLY REVIEWED THE EVIDENCE SUBMITTED TO THE COURT IN ACCORDANCE WITH THIS SUBSECTION FOR FACTUAL ACCURACY; AND
2. CONFIRMED THE FACTUAL ACCURACY OF:
 - A. THE ALLEGATIONS SET FORTH IN THE COMPLAINT;
 - B. ANY SUPPORTING AFFIDAVITS OR AFFIRMATIONS FILED WITH THE COURT; AND
 - C. ANY NOTARIZATIONS CONTAINED IN THE SUPPORTING DOCUMENTS FILED TO THE COURT; AND

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

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

~~(XX) A STATEMENT AS TO WHETHER THE DEBT IS ABLE TO BE DISCHARGED IN BANKRUPTCY.~~

- (4) 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 PRIVATE EDUCATION LOAN OWNED BY THE CREDITOR HAS NOT EXPIRED.

5-1303.

- (A) A PRIVATE EDUCATION LOAN COLLECTOR SHALL PROVIDE THE INFORMATION DESCRIBED UNDER § 5-1302(B)(3)(I) THROUGH ~~(VII)~~ OF THIS SUBTITLE ~~IN THE FIRST COLLECTION COMMUNICATION WITH THE STUDENT LOAN BORROWER AND~~ ON REQUEST OF THE STUDENT LOAN BORROWER; PROVIDED THAT THE STUDENT LOAN BORROWER HAS NOT REQUESTED SUCH INFORMATION WITHIN THE LAST 24 MONTHS.
- ~~(B) FAILURE TO PRODUCE TO A STUDENT LOAN BORROWER, ON REQUEST OF THE STUDENT LOAN BORROWER, THE DOCUMENTATION DESCRIBED IN SUBSECTION (A) OF THIS SECTION IS AN UNFAIR, ABUSIVE, OR DECEPTIVE TRADE PRACTICE UNDER § 13-301 OF THE COMMERCIAL LAW ARTICLE.~~

5-1304.

- (A) A PERSON THAT SUFFERS DAMAGE AS A RESULT OF THE FAILURE OF A CREDITOR TO COMPLY WITH § 5-1302(B)(3) OF THIS SUBTITLE MAY BRING AN ACTION AGAINST THE CREDITOR TO RECOVER OR OBTAIN THE FOLLOWING:
- (1) AN ORDER VACATING ANY DEFAULT JUDGMENT ENTERED AGAINST THE PERSON;
 - (2) A JUDGMENT IN FAVOR OF THE PERSON;
 - (3) ACTUAL DAMAGES ~~IN AN AMOUNT NOT LESS THAN \$500 PER PERSON, PER VIOLATION;~~
 - (4) RESTITUTION OF ALL MONEY TAKEN FROM OR PAID BY THE PERSON AFTER A JUDGMENT WAS OBTAINED BY A CREDITOR;
 - (5) PUNITIVE DAMAGES;
 - (6) REASONABLE ATTORNEY'S FEES;
 - (7) CORRECTION OF THE PERSON'S CREDIT REPORT; AND
 - (8) ANY OTHER RELIEF THAT THE COURT DEEMS PROPER.
- (B) IN ADDITION TO ANY JUDGMENT UNDER SUBSECTION (A) OF THIS SECTION, IF IT IS PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT A CREDITOR OR COUNSEL REPRESENTING A CREDITOR FILED AN AFFIDAVIT REQUIRED UNDER THIS TITLE CONTAINING FALSE INFORMATION, THE COURT SHALL AWARD TREBLE ACTUAL DAMAGES TO THE PERSON IN AN AMOUNT NOT LESS THAN \$1,500 PER PERSON FOR EACH VIOLATION.

SECTION 2. AND BE IT FURTHER ENACTED, that this Act shall take effect October 1, ~~2020~~ 2021.