

# SENATE BILL 732

D3, F2, I3  
HB 26/21 – APP & JUD

2lr2160  
CF HB 111

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By: **Senators Watson, Lee, Pinsky, Rosapepe, Smith, and Waldstreicher**

Introduced and read first time: February 7, 2022

Assigned to: Judicial Proceedings

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## 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.**

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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:**

31                   **(I) A BANK AS DEFINED IN THE FEDERAL DEPOSIT INSURANCE**

1 ACT; OR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (II) AN INTEREST RATE WILL NOT BE APPLIED TO THE CREDIT

1 BALANCE AND THE TERM OF THE EXTENSION OF CREDIT IS NOT MORE THAN 1 YEAR,  
2 EVEN IF THE CREDIT IS PAYABLE IN MORE THAN FOUR INSTALLMENTS.

3 (G) "PRIVATE EDUCATION LOAN COLLECTION ACTION" MEANS A JUDICIAL  
4 ACTION IN WHICH A CLAIM IS ASSERTED TO COLLECT A PRIVATE EDUCATION LOAN.

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

8 (2) "PRIVATE EDUCATION LOAN COLLECTOR" DOES NOT INCLUDE:

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

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

13 (I) "STUDENT LOAN BORROWER" MEANS AN INDIVIDUAL WHO RECEIVES OR  
14 AGREES TO PAY A PRIVATE EDUCATION LOAN.

15 5-1302.

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

21 (B) (1) THIS SUBSECTION APPLIES:

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

26 (II) REGARDLESS OF THE LEGAL STATUS OF THE TRUST'S  
27 TRUSTEE.

28 (2) IN ADDITION TO ANY OTHER PROVISION OF LAW, A COURT MAY  
29 NOT ENTER A JUDGMENT IN FAVOR OF A PRIVATE EDUCATION LENDER OR A  
30 PRIVATE EDUCATION LOAN COLLECTOR UNLESS THE PRIVATE EDUCATION LENDER  
31 OR PRIVATE EDUCATION LOAN COLLECTOR INTRODUCES INTO EVIDENCE THE  
32 DOCUMENTS SPECIFIED IN PARAGRAPH (3) OF THIS SUBSECTION IN ACCORDANCE

1 WITH THE RULES OF EVIDENCE APPLICABLE TO ACTIONS THAT ARE NOT SMALL  
2 CLAIMS ACTIONS BROUGHT UNDER § 4-405 OF THIS ARTICLE.

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

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

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

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

13 (IV) THE AMOUNT DUE AT DEFAULT;

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

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

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

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

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

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

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

1                   **A. STATES ALL TERMS AND CONDITIONS APPLICABLE TO**  
2 **THE PRIVATE EDUCATION LOAN; AND**

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

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

12                   **A. INCLUDES ALL TERMS AND CONDITIONS APPLICABLE**  
13 **TO THE PRIVATE EDUCATION LOAN; AND**

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

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

20                   **1. PERSONALLY REVIEWED THE EVIDENCE SUBMITTED**  
21 **TO THE COURT IN ACCORDANCE WITH THIS SUBSECTION FOR FACTUAL ACCURACY;**  
22 **AND**

23                   **2. CONFIRMED THE FACTUAL ACCURACY OF:**

24                   **A. THE ALLEGATIONS SET FORTH IN THE COMPLAINT;**

25                   **B. ANY SUPPORTING AFFIDAVITS OR AFFIRMATIONS**  
26 **FILED WITH THE COURT; AND**

27                   **C. ANY NOTARIZATIONS CONTAINED IN THE**  
28 **SUPPORTING DOCUMENTS FILED TO THE COURT;**

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

31                   **(XIX) A STATEMENT AS TO WHETHER A DEBT IS ELIGIBLE FOR AN**

1 INCOME-BASED REPAYMENT PLAN;

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

4 (XXI) AN AFFIDAVIT STATING:

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

8 2. THAT THE PRIVATE EDUCATION LENDER OR PRIVATE  
9 EDUCATION LOAN COLLECTOR HAS NOT INITIATED THE PRIVATE EDUCATION LOAN  
10 COLLECTION ACTION AFTER THE APPLICABLE STATUTE OF LIMITATIONS HAS  
11 EXPIRED.

12 5-1303.

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

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

21 5-1304.

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

25 (1) AN ORDER VACATING ANY DEFAULT JUDGMENT ENTERED  
26 AGAINST THE PERSON;

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

28 (3) ACTUAL DAMAGES IN AN AMOUNT NOT LESS THAN \$500 PER  
29 PERSON, PER VIOLATION;

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



- 1           **(5) PUNITIVE DAMAGES;**
- 2           **(6) ATTORNEY'S FEES;**
- 3           **(7) CORRECTION OF THE PERSON'S CREDIT REPORT; AND**
- 4           **(8) ANY OTHER RELIEF THAT THE COURT CONSIDERS PROPER.**

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

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