

Department of Legislative Services  
Maryland General Assembly  
2023 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 165

(Senator Watson)

Judicial Proceedings

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Action to Collect a Private Education Loan – Required Documents

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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 who suffers damage as a result of a creditor's failure to comply with specified provisions of 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.

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Fiscal Summary

**State Effect:** The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. The Office of the Attorney General (OAG), Consumer Protection Division, can handle the bill's requirements with existing resources.

**Local Effect:** The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Bill Summary:** The bill defines “private education loan” as an extension of credit that:

- is not made, insured, or guaranteed under Title IV of the Higher Education Act of 1965;
- 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);
- does not include open-end credit or any loan that is secured by real property or a dwelling; and
- does not include an extension of credit in which the covered institution is the creditor if (1) the term of the extension of credit is 90 days or less or (2) an interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

The bill’s requirements apply to a private education loan collection action, including a small claim action that is maintained by a private education lender or collector, regardless of the legal status of the trust’s trustee. The bill prohibits a court from entering a judgment in favor of a private education lender or collector unless the proper documentation is introduced into evidence in accordance with the rules of evidence applicable to actions that are not small claims actions.

A person who suffers damage as a result of the failure of a creditor to comply with the bill’s requirements regarding the introduction of specified documents into evidence may bring an action against the creditor to recover or obtain the following:

- an order vacating any default judgment entered against the person;
- a judgment in favor of the person;
- actual damages of at least \$500 per person, per violation;
- restitution of all money taken from (or paid by) the person after a judgment was obtained by a creditor;
- punitive damages;
- attorney’s fees; and
- any other relief that the court considers proper.

In addition, if a creditor (or counsel representing a creditor) willfully filed a required affidavit containing false information, the court may award treble actual damages to the person (or at least \$1,500 per person) for each violation.

**Current Law:** Statutory provisions require the Office of the Commissioner of Financial Regulation (OCFR) to designate an individual to serve as a Student Loan Ombudsman. Among other things, the ombudsman must receive and process complaints about student education loan servicing and may refer any matter that is abusive, unfair, deceptive, or fraudulent to OAG for civil enforcement or criminal prosecution.

A student loan servicer (*i.e.*, the entity collecting principal, interest, or other amounts owed on student loans) is prohibited from taking specified adverse actions with regard to student loan borrowers. Furthermore, a student loan servicer must engage in certain conduct on receipt of a written inquiry or complaint from a student loan borrower or the borrower's authorized representative. This includes acknowledging receipt of a written inquiry within 10 days and providing information responding to the inquiry or complaint within 30 days, as specified. OCFR is authorized to enforce these provisions. The Student Loan Ombudsman may refer any complaint from a student loan borrower to OCFR for investigation. A violation of these provisions is an unfair, abusive, or deceptive trade practice under MCPA, subject to MCPA's civil and criminal penalty provisions.

#### *Maryland Consumer Protection Act*

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind that has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

**Small Business Effect:** Any small business lenders or collectors that engage in lending or collecting as described in the bill may be affected, as the bill makes it more difficult to collect student loan debts that are in arrears due to additional documentation, notice, and

evidence requirements. However, the number of small business entities in the State that engage in the activities described by the bill is not known.

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### **Additional Information**

**Prior Introductions:** Similar legislation has been introduced within the last three years. See HB 111 and SB 732 of 2022; HB 26 of 2021; and HB 1562 of 2020.

**Designated Cross File:** HB 50 (Delegate Lopez) - Appropriations and Judiciary.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Department of Legislative Services

**Fiscal Note History:** First Reader - January 20, 2023  
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