

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0580.01 Brita Darling x2241

SENATE BILL 16-043

SENATE SPONSORSHIP

Carroll,

HOUSE SPONSORSHIP

Kagan,

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 CONCERNING INCREASED CONSUMER PROTECTIONS IN STUDENT
102 LENDING FOR EDUCATION LOANS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill prohibits a private educational lender, as defined in the bill, from offering gifts to a covered educational institution, as defined in the bill, including public and private institutions of higher education, in exchange for any advantage or consideration related to loan activities or from engaging in revenue sharing. Further, the bill prohibits persons employed at covered educational institutions from receiving anything of

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

value from private educational lenders.

The bill makes it unlawful for a private educational lender to impose a fee or penalty on a borrower for early repayment or prepayment of a private education loan and requires a lender to disclose any agreements made with a card issuer or creditor for purposes of marketing a credit card.

The bill requires private educational lenders to disclose information to a potential borrower or borrower both at the time of application for a private education loan and at the time of consummation of the loan. The required disclosures are described in the bill and include, among other disclosures, the interest rate for the loan and adjustments to the rate, potential finance charges and penalties, payment options, an estimate of the total amount for repayment at the interest rate, the possibility of qualifying for federal loans, the terms and conditions of the loan, and that the borrower may cancel the loan, without penalty, within 3 business days after the date on which the loan is consummated.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 5-3-112 as
3 follows:

4 **5-3-112. Private education loans - requirements - disclosures**
5 **- definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
6 OTHERWISE REQUIRES:

7 (a) "COVERED EDUCATIONAL INSTITUTION" MEANS ANY
8 EDUCATIONAL INSTITUTION, INCLUDING A PUBLIC OR PRIVATE INSTITUTION
9 OF HIGHER EDUCATION, THAT OFFERS A POSTSECONDARY EDUCATIONAL
10 DEGREE, CERTIFICATE, OR PROGRAM OF STUDY, AND INCLUDES AN AGENT,
11 OFFICER, OR EMPLOYEE OF THE EDUCATIONAL INSTITUTION.

12 (b) "PRIVATE EDUCATIONAL LENDER" MEANS:

13 (I) A FINANCIAL INSTITUTION THAT IS LISTED IN 12 U.S.C. SEC.
14 1813, THAT SOLICITS, MAKES, OR EXTENDS PRIVATE EDUCATION LOANS;

15 (II) A FEDERAL CREDIT UNION, AS DEFINED IN 12 U.S.C. SEC. 1752,
16 THAT SOLICITS, MAKES, OR EXTENDS PRIVATE EDUCATION LOANS; AND

1 (III) ANY OTHER PERSON ENGAGED IN THE BUSINESS OF
2 SOLICITING, MAKING, OR EXTENDING PRIVATE EDUCATION LOANS THAT IS
3 NOT A FEDERAL, STATE, OR LOCAL GOVERNMENT OR GOVERNMENTAL
4 CORPORATION OR ENTERPRISE.

5 (c) "PRIVATE EDUCATION LOAN" MEANS A LOAN PROVIDED BY A
6 PRIVATE EDUCATIONAL LENDER THAT:

7 (I) IS NOT MADE, INSURED, OR GUARANTEED UNDER 20 U.S.C. SEC.
8 1070 ET SEQ.;

9 (II) IS ISSUED EXPRESSLY FOR POSTSECONDARY EDUCATIONAL
10 EXPENSES TO A BORROWER, REGARDLESS OF WHETHER THE LOAN IS
11 PROVIDED THROUGH THE EDUCATIONAL INSTITUTION THAT THE SUBJECT
12 STUDENT ATTENDS OR DIRECTLY TO THE BORROWER FROM THE PRIVATE
13 EDUCATIONAL LENDER; AND

14 (III) DOES NOT INCLUDE AN EXTENSION OF CREDIT UNDER A
15 REVOLVING CREDIT PLAN, A REVERSE MORTGAGE TRANSACTION, A
16 RESIDENTIAL MORTGAGE TRANSACTION, OR ANY OTHER LOAN THAT IS
17 SECURED BY REAL PROPERTY OR A DWELLING.

18 (2) A PRIVATE EDUCATIONAL LENDER SHALL NOT, DIRECTLY OR
19 INDIRECTLY:

20 (a) OFFER OR PROVIDE ANY GIFT TO A COVERED EDUCATIONAL
21 INSTITUTION IN EXCHANGE FOR ANY ADVANTAGE OR CONSIDERATION
22 PROVIDED TO THE PRIVATE EDUCATIONAL LENDER RELATED TO ITS
23 PRIVATE EDUCATIONAL LOAN ACTIVITIES; OR

24 (b) ENGAGE IN REVENUE SHARING WITH A COVERED EDUCATIONAL
25 INSTITUTION.

26 (3) (a) A PERSON SHALL NOT RECEIVE ANYTHING OF VALUE FROM
27 A PRIVATE EDUCATIONAL LENDER OR GROUP OF SUCH LENDERS IF THE

1 PERSON:

2 (I) (A) IS EMPLOYED IN THE FINANCIAL AID OFFICE OF A COVERED
3 EDUCATIONAL INSTITUTION; OR

4 (B) OTHERWISE HAS RESPONSIBILITIES WITH RESPECT TO PRIVATE
5 EDUCATION LOANS OR OTHER FINANCIAL AID OF THE INSTITUTION; AND

6 (II) SERVES ON AN ADVISORY BOARD, COMMISSION, OR GROUP
7 ESTABLISHED BY A PRIVATE EDUCATIONAL LENDER OR GROUP OF SUCH
8 LENDERS.

9 (c) NOTHING IN THIS SUBSECTION (3) PROHIBITS THE
10 REIMBURSEMENT OF REASONABLE EXPENSES INCURRED BY AN EMPLOYEE
11 OF A COVERED EDUCATIONAL INSTITUTION AS PART OF THE EMPLOYEE'S
12 SERVICES ON AN ADVISORY BOARD, COMMISSION, OR GROUP DESCRIBED IN
13 THIS SUBSECTION (3).

14 (4) IT IS UNLAWFUL FOR A PRIVATE EDUCATIONAL LENDER TO
15 IMPOSE A FEE OR PENALTY ON A BORROWER FOR EARLY REPAYMENT OR
16 PREPAYMENT OF A PRIVATE EDUCATION LOAN.

17 (5) A COVERED EDUCATIONAL INSTITUTION SHALL PUBLICLY
18 DISCLOSE ANY CONTRACT OR OTHER AGREEMENT MADE WITH A CARD
19 ISSUER OR CREDITOR FOR THE PURPOSE OF MARKETING A CREDIT CARD.

20 (6) IN ANY APPLICATION FOR A PRIVATE EDUCATION LOAN, OR A
21 SOLICITATION FOR A PRIVATE EDUCATION LOAN WITHOUT REQUIRING AN
22 APPLICATION, THE PRIVATE EDUCATIONAL LENDER SHALL DISCLOSE TO
23 THE BORROWER, CLEARLY AND CONSPICUOUSLY:

24 (a) THE POTENTIAL RANGE OF RATES OF INTEREST APPLICABLE TO
25 THE PRIVATE EDUCATION LOAN;

26 (b) WHETHER THE RATE OF INTEREST APPLICABLE TO THE PRIVATE
27 EDUCATION LOAN IS FIXED OR VARIABLE;

1 (c) THE PRESENCE OR ABSENCE AND RELEVANT TERMS GOVERNING
2 INTEREST RATE ADJUSTMENTS, BOTH IN TERMS OF FREQUENCY AND
3 AMOUNT;

4 (d) REQUIREMENTS FOR THE CO-BORROWER, INCLUDING ANY
5 CHANGES IN THE APPLICABLE INTEREST RATES WITHOUT A CO-BORROWER;

6 (e) POTENTIAL FINANCE CHARGES, LATE FEES, PENALTIES, AND
7 ADJUSTMENTS TO PRINCIPAL, BASED ON DEFAULTS OR LATE PAYMENTS OF
8 THE BORROWER;

9 (f) FEES OR THE RANGE OF FEES APPLICABLE TO THE PRIVATE
10 EDUCATION LOAN;

11 (g) THE TERM OF THE PRIVATE EDUCATION LOAN;

12 (h) WHETHER INTEREST WILL ACCRUE WHILE THE STUDENT TO
13 WHOM THE PRIVATE EDUCATION LOAN RELATES IS ENROLLED AT A
14 COVERED EDUCATIONAL INSTITUTION;

15 (i) PAYMENT DEFERRAL OPTIONS;

16 (j) GENERAL ELIGIBILITY CRITERIA FOR THE PRIVATE EDUCATION
17 LOAN;

18 (k) AN EXAMPLE OF THE TOTAL COST OF THE PRIVATE EDUCATION
19 LOAN OVER THE LIFE OF THE LOAN, WHICH EXAMPLE SHALL BE
20 CALCULATED USING THE PRINCIPAL AMOUNT AND THE MAXIMUM RATE OF
21 INTEREST ACTUALLY OFFERED BY THE PRIVATE EDUCATIONAL LENDER,
22 AND CALCULATED BOTH WITH AND WITHOUT CAPITALIZATION OF
23 INTEREST, IF AN OPTION EXISTS FOR POSTPONING INTEREST PAYMENTS;

24 (l) THAT A COVERED EDUCATIONAL INSTITUTION MAY HAVE
25 SCHOOL-SPECIFIC EDUCATION LOAN BENEFITS AND TERMS NOT DETAILED
26 ON THE DISCLOSURE FORM;

27 (m) THAT THE BORROWER MAY QUALIFY FOR FEDERAL STUDENT

1 FINANCIAL ASSISTANCE THROUGH A PROGRAM UNDER TITLE IV OF THE
2 "HIGHER EDUCATION ACT OF 1965", 20 U.S.C. SEC. 1070 ET SEQ., IN LIEU
3 OF, OR IN ADDITION TO, A LOAN FROM A NONFEDERAL SOURCE;

4 (n) THE INTEREST RATES AVAILABLE WITH RESPECT TO SUCH
5 FEDERAL STUDENT FINANCIAL ASSISTANCE THROUGH A PROGRAM UNDER
6 TITLE IV OF THE "HIGHER EDUCATION ACT OF 1965", 20 U.S.C. SEC. 1070
7 ET SEQ.;

8 (o) THAT, AS PROVIDED IN SUBSECTION (9) OF THIS SECTION:

9 (I) THE BORROWER HAS THE RIGHT TO ACCEPT THE TERMS OF THE
10 LOAN AND CONSUMMATE THE TRANSACTION AT ANY TIME WITHIN THIRTY
11 CALENDAR DAYS, OR SUCH LONGER PERIOD AS THE PRIVATE EDUCATIONAL
12 LENDER PROVIDES, FOLLOWING THE DATE ON WHICH THE APPLICATION FOR
13 THE LOAN IS APPROVED AND THE BORROWER RECEIVES THE DISCLOSURE
14 DOCUMENTS REQUIRED FOR THE LOAN PURSUANT TO THIS SUBSECTION (6);
15 AND

16 (II) EXCEPT FOR CHANGES BASED ON ADJUSTMENTS TO THE INDEX
17 USED FOR THE LOAN, THE PRIVATE EDUCATIONAL LENDER CANNOT
18 CHANGE THE RATES AND TERMS OF THE LOAN DURING THE PERIOD
19 DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (o);

20 (p) THAT THE BORROWER MAY CANCEL A PRIVATE EDUCATION
21 LOAN WITHIN THREE BUSINESS DAYS AFTER THE DATE ON WHICH THE LOAN
22 IS CONSUMMATED; AND

23 (q) THAT THE BORROWER MAY OBTAIN ADDITIONAL INFORMATION
24 CONCERNING FEDERAL STUDENT FINANCIAL ASSISTANCE FROM HIS OR HER
25 INSTITUTION OF HIGHER EDUCATION OR AT THE WEB SITE OF THE UNITED
26 STATES DEPARTMENT OF EDUCATION.

27 (7) CONTEMPORANEOUSLY WITH THE APPROVAL OF THE PRIVATE

1 EDUCATION LOAN APPLICATION, AND BEFORE THE LOAN TRANSACTION IS
2 CONSUMMATED, THE PRIVATE EDUCATIONAL LENDER SHALL DISCLOSE TO
3 THE BORROWER, CLEARLY AND CONSPICUOUSLY:

4 (a) THE APPLICABLE RATE OF INTEREST IN EFFECT ON THE DATE OF
5 APPROVAL;

6 (b) WHETHER THE RATE OF INTEREST APPLICABLE TO THE PRIVATE
7 EDUCATION LOAN IS FIXED OR VARIABLE;

8 (c) THE PRESENCE OR ABSENCE AND RELEVANT TERMS GOVERNING
9 INTEREST RATE ADJUSTMENTS, BOTH IN TERMS OF FREQUENCY AND
10 AMOUNT;

11 (d) THE INITIAL APPROVED PRINCIPAL AMOUNT;

12 (e) APPLICABLE FINANCE CHARGES, LATE FEES, PENALTIES, AND
13 ADJUSTMENTS TO PRINCIPAL, BASED ON BORROWER DEFAULTS OR LATE
14 PAYMENTS, INCLUDING LIMITATIONS ON THE DISCHARGE OF A PRIVATE
15 EDUCATION LOAN IN BANKRUPTCY;

16 (f) THE FEES OR RANGE OF FEES APPLICABLE TO THE PRIVATE
17 EDUCATION LOAN;

18 (g) THE MAXIMUM TERM UNDER THE PRIVATE EDUCATION LOAN
19 PROGRAM;

20 (h) AN ESTIMATE OF THE TOTAL AMOUNT FOR REPAYMENT, AT
21 BOTH THE INTEREST RATE IN EFFECT ON THE DATE OF APPROVAL AND AT
22 THE MAXIMUM POSSIBLE RATE OF INTEREST OFFERED BY THE PRIVATE
23 EDUCATIONAL LENDER AND APPLICABLE TO THE BORROWER, TO THE
24 EXTENT THAT SUCH MAXIMUM RATE MAY BE DETERMINED, OR IF NOT, A
25 GOOD-FAITH ESTIMATE OF THE MAXIMUM RATE;

26 (i) ANY PRINCIPAL AND INTEREST PAYMENT REQUIRED WHILE THE
27 STUDENT IS ENROLLED AT A COVERED EDUCATIONAL INSTITUTION AND

1 UNPAID INTEREST THAT WILL ACCRUE DURING SUCH ENROLLMENT;

2 (j) PAYMENT DEFERRAL OPTIONS APPLICABLE TO THE BORROWER;

3 (k) WHETHER MONTHLY PAYMENTS ARE GRADUATED;

4 (l) THAT, AS PROVIDED IN SUBSECTION (9) OF THIS SECTION:

5 (I) THE BORROWER HAS THE RIGHT TO ACCEPT THE TERMS OF THE

6 LOAN AND CONSUMMATE THE TRANSACTION AT ANY TIME WITHIN THIRTY

7 CALENDAR DAYS, OR SUCH LONGER PERIOD AS THE PRIVATE EDUCATIONAL

8 LENDER MAY PROVIDE, FOLLOWING THE DATE ON WHICH THE APPLICATION

9 FOR THE LOAN IS APPROVED AND THE BORROWER RECEIVES THE

10 DISCLOSURE DOCUMENTS REQUIRED FOR THE LOAN PURSUANT TO THIS

11 SUBSECTION (7); AND

12 (II) EXCEPT FOR CHANGES BASED ON ADJUSTMENTS TO THE INDEX

13 USED FOR THE LOAN, THE PRIVATE EDUCATIONAL LENDER CANNOT

14 CHANGE THE RATES AND TERMS OF THE LOAN DURING THE PERIOD

15 DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (I);

16 (m) (I) THAT THE BORROWER MAY QUALIFY FOR FEDERAL

17 STUDENT FINANCIAL ASSISTANCE THROUGH A PROGRAM UNDER TITLE IV

18 OF THE "HIGHER EDUCATION ACT OF 1965", 20 U.S.C. SEC. 1070 ET SEQ.,

19 IN LIEU OF, OR IN ADDITION TO, A LOAN FROM A NONFEDERAL SOURCE; AND

20 (II) THAT THE BORROWER MAY OBTAIN ADDITIONAL INFORMATION

21 CONCERNING FEDERAL STUDENT FINANCIAL ASSISTANCE FROM HIS OR HER

22 INSTITUTION OF HIGHER EDUCATION OR AT THE WEB SITE OF THE UNITED

23 STATES DEPARTMENT OF EDUCATION;

24 (n) THE INTEREST RATES AVAILABLE WITH RESPECT TO SUCH

25 FEDERAL STUDENT FINANCIAL ASSISTANCE THROUGH A PROGRAM UNDER

26 TITLE IV OF THE "HIGHER EDUCATION ACT OF 1965", 20 U.S.C. SEC. 1070

27 ET SEQ.;

1 (o) THE MAXIMUM MONTHLY PAYMENT, CALCULATED USING THE
2 MAXIMUM RATE OF INTEREST OFFERED BY THE PRIVATE EDUCATIONAL
3 LENDER AND APPLICABLE TO THE BORROWER, TO THE EXTENT THAT SUCH
4 MAXIMUM RATE MAY BE DETERMINED, OR IF NOT, A GOOD-FAITH ESTIMATE
5 OF THE MAXIMUM RATE; AND

6 (p) THAT THE BORROWER MAY CANCEL A PRIVATE EDUCATION
7 LOAN WITHIN THREE BUSINESS DAYS AFTER THE DATE ON WHICH THE LOAN
8 IS CONSUMMATED.

9 (8) TO THE EXTENT POSSIBLE, A PRIVATE EDUCATIONAL LENDER
10 SHALL USE MODEL FORMS H-21 AND H-23 OF THE CONSUMER FINANCIAL
11 PROTECTION BUREAU, OR SUCCESSOR FORMS, TO PROVIDE THE
12 DISCLOSURES REQUIRED PURSUANT TO THIS SECTION.

13 (9) THE BORROWER HAS THE RIGHT TO ACCEPT A PRIVATE
14 EDUCATION LOAN AND CONSUMMATE THE TRANSACTION AT ANY TIME
15 WITHIN THIRTY CALENDAR DAYS, OR SUCH LONGER PERIOD AS THE
16 PRIVATE EDUCATIONAL LENDER PROVIDES, FOLLOWING THE DATE ON
17 WHICH THE APPLICATION FOR THE LOAN IS APPROVED AND THE BORROWER
18 RECEIVES THE DISCLOSURE DOCUMENTS REQUIRED FOR THE LOAN
19 PURSUANT TO SUBSECTION (6) OF THIS SECTION, AND THE PRIVATE
20 EDUCATIONAL LENDER SHALL NOT CHANGE THE RATES AND TERMS OF THE
21 LOAN DURING THAT PERIOD. EXCEPT FOR CHANGES BASED ON
22 ADJUSTMENTS TO THE INDEX USED FOR THE LOAN, THE PRIVATE
23 EDUCATIONAL LENDER SHALL NOT CHANGE THE RATES AND TERMS OF THE
24 LOAN PRIOR TO THE EARLIER DATE OF ACCEPTANCE OF THE TERMS OF THE
25 LOAN AND CONSUMMATION OF THE LOAN BY THE BORROWER OR THE
26 EXPIRATION OF THE PERIOD DESCRIBED IN THIS SUBSECTION (9).

27 (10) (a) A BORROWER MAY CANCEL A PRIVATE EDUCATION LOAN

1 WITHOUT PENALTY TO THE BORROWER AT ANY TIME WITHIN THREE
2 BUSINESS DAYS AFTER THE DATE ON WHICH THE LOAN IS CONSUMMATED.

3 (b) PRIVATE EDUCATION LOAN FUNDS SHALL NOT BE DISBURSED
4 PRIOR TO THE THREE-DAY PERIOD DESCRIBED IN PARAGRAPH (a) OF THIS
5 SUBSECTION (10).

6 **SECTION 2. Act subject to petition - effective date.** This act
7 takes effect September 15, 2016; except that, if a referendum petition is
8 filed pursuant to section 1 (3) of article V of the state constitution against
9 this act or an item, section, or part of this act within the ninety-day period
10 after final adjournment of the general assembly, then the act, item,
11 section, or part will not take effect unless approved by the people at the
12 general election to be held in November 2016 and, in such case, will take
13 effect on the date of the official declaration of the vote thereon by the
14 governor.