

# HOUSE BILL 26

D3, F2, I3

1lr1274

(PRE-FILED)

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By: **Delegate Lopez**

Requested: October 29, 2020

Introduced and read first time: January 13, 2021

Assigned to: Appropriations and Judiciary

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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 except under certain circumstances;  
5 prohibiting a court from entering a certain judgment unless the private education  
6 lender or private education loan collector introduces certain documents in  
7 accordance with certain rules; requiring a private education lender or private  
8 education loan collector to introduce certain information in a certain action;  
9 requiring a private education loan collector to provide certain information to a  
10 student loan borrower in a certain communication and on request of the student loan  
11 borrower; establishing that a failure of a private education loan collector to provide  
12 certain information to a student loan borrower under certain circumstances is an  
13 unfair, abusive, or deceptive trade practice; authorizing a certain person to bring a  
14 certain action; authorizing the court to award certain damages under certain  
15 circumstances; providing for the application of this Act; defining certain terms; and  
16 generally relating to documents required in an action to collect a private education  
17 loan.

18 BY adding to

19 Article – Courts and Judicial Proceedings

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

22 Annotated Code of Maryland

23 (2020 Replacement Volume)

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

26 **Article – Courts and Judicial Proceedings**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

2   **5-1301.**

3           **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
4 **INDICATED.**

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

9           **(2) “COSIGNER” INCLUDES:**

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

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

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

17           **(C) (1) “CREDITOR” MEANS:**

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

20                   **(II) THE PERSON THAT OWNED THE PRIVATE EDUCATION LOAN**  
21 **AT THE TIME THE PRIVATE EDUCATION LOAN DEFAULTED, EVEN IF THE PERSON DID**  
22 **NOT ORIGINATE THE PRIVATE EDUCATION LOAN IF THE PRIVATE EDUCATION LOAN**  
23 **WAS NOT SUBSEQUENTLY SOLD, TRANSFERRED, OR ASSIGNED; OR**

24                   **(III) A PERSON THAT PURCHASED A DEFAULTED PRIVATE**  
25 **EDUCATION LOAN FOR COLLECTION PURPOSES, REGARDLESS OF WHETHER THE**  
26 **PERSON:**

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

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

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

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

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

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

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

9           **(E) (1) “PRIVATE EDUCATION LENDER” MEANS:**

10                           **(I) A PERSON ENGAGED IN THE BUSINESS OF SECURING,**  
11 **MAKING, OR EXTENDING PRIVATE 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:**

1                   **(I) THE TERM OF THE EXTENSION OF CREDIT IS NOT MORE**  
2 **THAN 90 DAYS; OR**

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

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

8           **(H) (1) “PRIVATE EDUCATION LOAN COLLECTOR” MEANS A PERSON THAT**  
9 **COLLECTS OR ATTEMPTS TO COLLECT ON A DEFAULTED PRIVATE EDUCATION LOAN.**

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

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

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

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

17 **5-1302.**

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

23           **(B) (1) THIS SUBSECTION APPLIES TO A PRIVATE EDUCATION LOAN**  
24 **COLLECTION ACTION, INCLUDING A SMALL CLAIM ACTION UNDER § 4-405 OF THIS**  
25 **ARTICLE, THAT IS MAINTAINED BY A PRIVATE EDUCATION LENDER OR A PRIVATE**  
26 **EDUCATION LOAN COLLECTOR.**

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

1 CLAIMS ACTIONS BROUGHT UNDER § 4-405 OF THIS ARTICLE.

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

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

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

9 (III) IF THE ORIGINAL CREDITOR USED AN ACCOUNT NUMBER AT  
10 THE TIME OF DEFAULT, THE ORIGINAL CREDITOR'S ACCOUNT NUMBER;

11 (IV) THE AMOUNT DUE AT DEFAULT;

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

16 (VI) A RECORD OF THE DATE THAT THE PRIVATE EDUCATION  
17 LOAN WAS INCURRED;

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

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

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

25 (X) A COPY OF THE SELF-CERTIFICATION FORM AND ANY  
26 OTHER NEEDS ANALYSIS CONDUCTED BY THE ORIGINAL CREDITOR BEFORE THE  
27 ORIGINATION OF THE LOAN;

28 (XI) IF APPLICABLE, THE NAMES OF ALL PERSONS THAT OWNED  
29 THE PRIVATE EDUCATION LOAN AFTER THE TIME OF DEFAULT AND THE DATE OF  
30 EACH SALE OR TRANSFER OF THE LOAN;

1 (XII) A RECORD OF ALL COLLECTION ATTEMPTS MADE IN THE  
2 IMMEDIATELY PRECEDING 12 MONTHS, INCLUDING THE DATE AND TIME OF ALL  
3 COMMUNICATIONS;

4 (XIII) A STATEMENT BY THE CREDITOR INDICATING WHETHER  
5 THE CREDITOR IS WILLING TO RENEGOTIATE THE TERMS OF THE DEBT;

6 (XIV) 1. COPIES OF ALL SETTLEMENT COMMUNICATIONS  
7 MADE IN THE IMMEDIATELY PRECEDING 12 MONTHS; OR

8 2. A STATEMENT THAT THE CREDITOR HAS NOT  
9 ATTEMPTED TO SETTLE OR OTHERWISE RENEGOTIATE THE DEBT BEFORE FILING  
10 THE PRIVATE EDUCATION LOAN COLLECTION ACTION;

11 (XV) 1. DOCUMENTATION ESTABLISHING THAT THE  
12 CREDITOR IS THE OWNER OF THE SPECIFIC INDIVIDUAL PRIVATE EDUCATION LOAN  
13 AT ISSUE; AND

14 2. IF THE PRIVATE EDUCATION LOAN WAS ASSIGNED  
15 MORE THAN ONCE, A RECORD OF EACH ASSIGNMENT OR OTHER WRITING, NOT  
16 INCLUDING A WRITING PREPARED IN ANTICIPATION OF LITIGATION, INDICATING  
17 THE TRANSFER OF OWNERSHIP OF THE INDIVIDUAL PRIVATE EDUCATION LOAN  
18 BEGINNING WITH THE ORIGINAL CREDITOR AND ENDING WITH THE MOST RECENT  
19 ADDITIONAL CREDITOR, INCLUDING:

20 A. THE ORIGINAL CREDITOR'S ACCOUNT NUMBER,  
21 REDACTED TO SHOW ONLY THE LAST FOUR DIGITS, FOR THE PRIVATE EDUCATION  
22 LOAN PURCHASED OR OTHERWISE ASSIGNED;

23 B. THE DATE OF PURCHASE AND ASSIGNMENT; AND

24 C. THE STUDENT LOAN BORROWER'S CORRECT NAME  
25 ASSOCIATED WITH THE ORIGINAL ACCOUNT NUMBER;

26 (XVI) 1. A COPY OF ALL PAGES OF THE CONTRACT,  
27 APPLICATION, OR OTHER DOCUMENT EVIDENCING THE STUDENT LOAN  
28 BORROWER'S LIABILITY FOR THE PRIVATE EDUCATION LOAN, STATING ALL TERMS  
29 AND CONDITIONS APPLICABLE TO THE PRIVATE EDUCATION LOAN; OR

30 2. IF A SIGNED CONTRACT, APPLICATION, OR OTHER  
31 DOCUMENT EVIDENCING THE STUDENT LOAN BORROWER'S LIABILITY DOES NOT  
32 EXIST, A COPY OF A DOCUMENT PROVIDED TO THE PRIVATE EDUCATION LOAN  
33 BORROWER BEFORE THE DEFAULT DEMONSTRATING THAT THE PRIVATE

1 EDUCATION LOAN WAS INCURRED BY THE STUDENT LOAN BORROWER, INCLUDING  
2 ALL TERMS AND CONDITIONS APPLICABLE TO THE PRIVATE EDUCATION LOAN;

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

5 1. PERSONALLY REVIEWED THE EVIDENCE SUBMITTED  
6 TO THE COURT IN ACCORDANCE WITH THIS SUBSECTION FOR FACTUAL ACCURACY;  
7 AND

8 2. CONFIRMED THE FACTUAL ACCURACY OF:

9 A. THE ALLEGATIONS SET FORTH IN THE COMPLAINT;

10 B. ANY SUPPORTING AFFIDAVITS OR AFFIRMATIONS  
11 FILED WITH THE COURT; AND

12 C. ANY NOTARIZATIONS CONTAINED IN THE  
13 SUPPORTING DOCUMENTS FILED TO THE COURT;

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

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

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

20 (XXI) AN AFFIDAVIT STATING THE PRIVATE EDUCATION LENDER  
21 OR PRIVATE EDUCATION LOAN COLLECTOR HAS NOT INITIATED THE CONSUMER  
22 DEBT COLLECTION ACTION AFTER THE APPLICABLE STATUTE OF LIMITATIONS HAS  
23 EXPIRED.

24 5-1303.

25 (A) A PRIVATE EDUCATION LOAN COLLECTOR SHALL PROVIDE THE  
26 INFORMATION DESCRIBED UNDER § 5-1302(B)(3)(I) THROUGH (XI) OF THIS  
27 SUBTITLE IN THE FIRST COLLECTION COMMUNICATION WITH THE STUDENT LOAN  
28 BORROWER AND ON REQUEST OF THE STUDENT LOAN BORROWER.

29 (B) FAILURE TO PRODUCE TO A STUDENT LOAN BORROWER, ON REQUEST  
30 OF THE STUDENT LOAN BORROWER, THE DOCUMENTATION DESCRIBED IN

1 SUBSECTION (A) OF THIS SECTION IS AN UNFAIR, ABUSIVE, OR DECEPTIVE TRADE  
2 PRACTICE UNDER § 13-301 OF THE COMMERCIAL LAW ARTICLE.

3 5-1304.

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

7 (1) AN ORDER VACATING ANY DEFAULT JUDGMENT ENTERED  
8 AGAINST THE PERSON;

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

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

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

14 (5) PUNITIVE DAMAGES;

15 (6) ATTORNEY'S FEES;

16 (7) CORRECTION OF THE PERSON'S CREDIT REPORT; AND

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

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

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
24 October 1, 2021.