



# Senate

General Assembly

**File No. 279**

January Session, 2021

Senate Bill No. 716

*Senate, April 6, 2021*

The Committee on Higher Education and Employment Advancement reported through SEN. SLAP of the 5th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

***AN ACT CONCERNING THE FEDERAL STUDENT LOAN  
BORROWERS' BILL OF RIGHTS ACT OF 2019.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 36a-846 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2021*):

3 As used in this section and sections 36a-847 to 36a-854, inclusive, and  
4 sections 3 and 4 of this act:

5 (1) "Advertise" or "advertising" has the same meaning as provided in  
6 section 36a-485;

7 (2) "Branch office" means a location other than the main office at  
8 which a licensee or any person on behalf of a licensee acts as a student  
9 loan servicer;

10 (3) "Consumer report" has the same meaning as provided in Section  
11 603(d) of the Fair Credit Reporting Act, 15 USC, 1681a, as amended from

12 time to time;

13 [(3)] (4) "Control person" has the same meaning as provided in section  
14 36a-485;

15 (5) "Cosigner" has the same meaning as provided in 15 USC 1650(a),  
16 as amended from time to time;

17 [(4)] (6) "Main office" has the same meaning as provided in section  
18 36a-485;

19 (7) "Person" means a natural person, corporation, limited liability  
20 company, trust, partnership, incorporated or unincorporated  
21 association or any other legal entity;

22 (8) "Private education loan" has the same meaning as provided in 15  
23 USC 1650(a), as amended from time to time;

24 [(5)] (9) "Student loan borrower" means any individual who resides  
25 within this state who has agreed to repay a student education loan;

26 [(6)] (10) "Student loan servicer" means any person, wherever located,  
27 responsible for the servicing of any student education loan to any  
28 student loan borrower;

29 [(7)] (11) "Servicing" means (A) receiving any scheduled periodic  
30 payments from a student loan borrower pursuant to the terms of a  
31 student education loan [; (B)] and applying the payments of principal  
32 and interest and such other payments with respect to the amounts  
33 received from a student loan borrower, as may be required pursuant to  
34 the terms of a student education loan; (B) maintaining account records  
35 for and communicating with the student loan borrower concerning the  
36 student education loan during the period when no scheduled periodic  
37 payments are required; (C) interacting with a student loan borrower for  
38 purposes of facilitating the servicing of a student education loan,  
39 including, but not limited to, assisting a student loan borrower to  
40 prevent such borrower from defaulting on obligations arising from the  
41 student education loan; or [(C)] (D) performing other administrative

42 services with respect to a student education loan;

43 [(8)] (12) "Student education loan" means any loan, including private  
44 education loans, primarily for personal use to finance education or other  
45 school-related expenses;

46 [(9)] (13) "Unique identifier" has the same meaning as provided in  
47 section 36a-485.

48 Sec. 2. Section 36a-850 of the general statutes is repealed and the  
49 following is substituted in lieu thereof (*Effective October 1, 2021*):

50 No person who is required to be licensed and who is subject to the  
51 provisions of sections 36a-846 to 36a-854, inclusive, as amended by this  
52 act, and no control person shall, directly or indirectly:

53 (1) Employ any scheme, device or artifice to defraud or mislead  
54 student loan borrowers;

55 (2) Engage in any unfair or deceptive practice toward any person or  
56 misrepresent or omit any material information in connection with the  
57 servicing of a student education loan, including, but not limited to,  
58 misrepresenting the amount, nature or terms of any fee or payment due  
59 or claimed to be due on a student education loan, the terms and  
60 conditions of the loan agreement or the borrower's obligations under the  
61 loan;

62 (3) Obtain property by fraud or misrepresentation;

63 (4) Knowingly misapply or recklessly apply student education loan  
64 payments to the outstanding balance of a student education loan;

65 (5) Knowingly or recklessly provide inaccurate information to a  
66 credit bureau, thereby harming a student loan borrower's  
67 creditworthiness;

68 (6) Fail to report both the favorable and unfavorable payment history  
69 of the student loan borrower to a nationally recognized consumer credit  
70 bureau at least annually if the student loan servicer licensee regularly

71 reports information to a credit bureau;

72 (7) Refuse to communicate with an authorized representative of the  
73 student loan borrower who provides a written authorization signed by  
74 the student loan borrower, provided the student loan servicer licensee  
75 may adopt procedures reasonably related to verifying that the  
76 representative is in fact authorized to act on behalf of the student loan  
77 borrower;

78 (8) Negligently make any false statement or knowingly and wilfully  
79 make any omission of a material fact in connection with any information  
80 or reports filed with a governmental agency or in connection with any  
81 investigation conducted by the commissioner or another governmental  
82 agency;

83 (9) Fail to establish, enforce and maintain policies and procedures for  
84 supervising employees, agents and office operations that are reasonably  
85 designed to achieve compliance with applicable student loan servicing  
86 laws and regulations; [or]

87 (10) Fail to comply with the service standards set by the  
88 commissioner in accordance with section 59 of public act 16-65; or

89 (11) Engage in an abusive act or practice, as described in Section 1031  
90 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,  
91 P.L. 111-203, as amended from time to time, when servicing a student  
92 education loan.

93 Sec. 3. (NEW) (*Effective October 1, 2021*) In servicing a private  
94 education loan, a student loan servicer shall:

95 (1) Prior to sending the first billing statement on a private education  
96 loan or immediately upon receipt of a private education loan following  
97 the transfer or assignment of such private education loan, provide to the  
98 student loan borrower, and to any cosigner of such private education  
99 loan, information concerning the rights and responsibilities of such  
100 student loan borrower and cosigner, including information regarding  
101 (A) how such private education loan obligation will appear on the

102 cosigner's consumer report, (B) how the cosigner will be notified if the  
103 private education loan becomes delinquent, including how the cosigner  
104 can cure the delinquency in order to avoid negative credit furnishing  
105 and loss of cosigner release eligibility, and (C) eligibility for release of  
106 the cosigner's obligation on such private education loan, including  
107 number of on-time payments and any other criteria required to approve  
108 the release of the cosigner from the loan obligation;

109 (2) Send annual written notice to all student loan borrowers and  
110 cosigners relating to information about cosigner release, including the  
111 criteria the student loan servicer requires to approve the release of a  
112 cosigner from a private education loan obligation and the process for  
113 applying for cosigner release;

114 (3) Upon satisfaction by the student loan borrower of the applicable  
115 consecutive on-time payment requirement for purposes of cosigner  
116 release eligibility, send, in writing, to such student loan borrower and  
117 cosigner (A) a notification that such consecutive on-time payment  
118 requirement has been satisfied and that such cosigner may be eligible  
119 for cosigner release, and (B) information relating to the procedure for  
120 applying for cosigner release and any additional criteria that a cosigner  
121 must satisfy in order to be eligible for cosigner release. Such notification  
122 and information shall be sent by either United States mail or electronic  
123 mail, provided such student loan borrower has elected to receive  
124 electronic communications from the student loan servicer;

125 (4) In the event that an application for a cosigner release is  
126 incomplete, provide, in writing, (A) notice to the student loan borrower  
127 and cosigner that such application is incomplete, and (B) a description  
128 of the information that is missing or the additional information that is  
129 needed to consider the application complete and the date by which the  
130 borrower or cosigner are required to provide such information;

131 (5) Not later than thirty days following the submission of an  
132 application for cosigner release, send to the student loan borrower and  
133 cosigner a written notice of the decision that such application has been  
134 approved or denied. If the application for cosigner release has been

135 denied, such written notice shall inform such student loan borrower and  
136 cosigner that such student loan borrower and cosigner have the right to  
137 request all documents and information used by the student loan servicer  
138 in its decision to deny such application, including the credit score  
139 threshold used by the student loan servicer, the consumer report of such  
140 student loan borrower or cosigner, the credit score of such student loan  
141 borrower or cosigner, and any other documents that are relevant or  
142 specific to such student loan borrower or cosigner. The student loan  
143 servicer shall provide such student loan borrower and cosigner with any  
144 adverse action notices required under federal law if the denial of such  
145 application was based in whole or in part on any information contained  
146 in a consumer report;

147 (6) Include the information described in subdivision (2) of this section  
148 in any response to an application for cosigner release;

149 (7) Refrain from imposing any restrictions on a student loan borrower  
150 or cosigner that may permanently prevent such student loan borrower  
151 or cosigner from qualifying for a cosigner release, including, but not  
152 limited to, restrictions on the number of times a student loan borrower  
153 or cosigner may apply for cosigner release;

154 (8) Refrain from imposing any negative consequences on a student  
155 loan borrower or cosigner during the sixty days following issuance of  
156 the notice described in subdivision (4) of this section, or until a final  
157 decision concerning a student loan borrower or cosigner's application  
158 for cosigner release is made. For purposes of this subdivision, "negative  
159 consequences" includes, but is not limited to, the imposition of  
160 additional eligibility criteria, negative credit reporting, lost eligibility for  
161 a cosigner release, late fees, interest capitalization or other financial  
162 penalties or injury;

163 (9) Refrain from requiring a student loan borrower to make more than  
164 twelve consecutive on-time payments as part of the eligibility criteria  
165 for cosigner release. Such student loan servicer shall consider any  
166 student loan borrower who has paid the equivalent of twelve-months of  
167 principal and interest during any twelve-month period to have satisfied

168 the consecutive on-time payment requirement, even if such student loan  
169 borrower has not made payments monthly during such twelve-month  
170 period;

171 (10) Upon receipt of a request by a student loan borrower or cosigner  
172 to a change that results in restarting the count of consecutive on-time  
173 payments required for cosigner release eligibility, provide to such  
174 student loan borrower and cosigner written notification of the impact of  
175 such change on cosigner release eligibility and an opportunity to  
176 withdraw or reverse such change for purposes of avoiding such impact;

177 (11) Provide a student loan borrower or cosigner (A) the right to  
178 request an appeal of a determination to deny a cosigner release  
179 application, (B) an opportunity to submit additional information or  
180 documentation evidencing that such student loan borrower has the  
181 ability, willingness and stability to make his or her payment obligations,  
182 and (C) the right to request that a different employee of the student loan  
183 servicer review and make a determination on the application for a  
184 cosigner release;

185 (12) Establish and maintain a comprehensive record management  
186 system reasonably designed to ensure the accuracy, integrity and  
187 completeness of data and other information about cosigner release  
188 applications. Such system shall include the number of cosigner release  
189 applications received, the approval and denial rate of such applications  
190 and the primary reasons for denial of such applications;

191 (13) In the event that a cosigner has a total and permanent disability,  
192 as determined by any federal or state agency or doctor of medicine or  
193 osteopathy legally authorized to practice in the state, and unless  
194 otherwise expressly prohibited under the terms of a private education  
195 loan agreement, (A) release the cosigner from his or her obligation to  
196 repay the private education loan upon receipt of notification that such  
197 cosigner has a total and permanent disability, and (B) refrain from  
198 requiring that a new cosigner be added to such private education loan  
199 after the original cosigner has been released from such private education  
200 loan;

201 (14) Provide the cosigner of a private education loan with access to  
202 the same documents and records associated with the private education  
203 loan that are available to the student loan borrower of such private  
204 education loan; and

205 (15) If a student loan borrower has electronic access to documents and  
206 records associated with a private education loan, provide equivalent  
207 electronic access to such documents and records to the cosigner of such  
208 private education loan.

209 Sec. 4. (NEW) (*Effective October 1, 2020*) (a) Any student loan  
210 borrower, class of student loan borrowers or the legal representative of  
211 such borrower or borrowers aggrieved by a violation of sections 36a-846  
212 to 36a-854, inclusive, of the general statutes, as amended by this act, or  
213 section 3 of this act, by a student loan servicer, may bring an action in  
214 the Superior Court. Upon finding that a student loan servicer has  
215 committed a violation of said sections, the court may award a prevailing  
216 party actual damages, reasonable attorneys' fees and court costs, and  
217 may, in its discretion, award punitive damages and restitution of  
218 property and may provide such equitable relief as it deems necessary.

219 (b) In addition to the judicial relief permitted under subsection (a) of  
220 this section, in any civil action brought under this section in which the  
221 student loan borrower prevails, the court shall award treble damages  
222 upon a finding that the student loan servicer has engaged in conduct  
223 that substantially interferes with (1) such student loan borrower's right  
224 to an alternative payment arrangement, loan forgiveness, cancellation  
225 or discharge of the student education loan, or (2) any other financial  
226 benefit (A) established under the terms of such student loan borrower's  
227 promissory note, or (B) pursuant to the Higher Education Act of 1965,  
228 as amended from time to time, or the regulations adopted thereunder.

229 (c) Any student loan borrower, or the legal representative of such  
230 borrower, entitled to bring an action under subsection (a) of this section  
231 may, pursuant to rules established by the Superior Court, bring a class  
232 action on behalf of themselves and other similarly situated student loan  
233 borrowers to recover damages.

234 (d) The remedies provided under this section are in addition to any  
235 other remedies provided by state or federal law, and a student loan  
236 borrower shall not be required to exhaust any administrative remedies  
237 established pursuant to sections 36a-846 to 36a-854, inclusive, of the  
238 general statutes, as amended by this act, and section 3 of this act, prior  
239 to bringing an action under this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2021</i>	36a-846
Sec. 2	<i>October 1, 2021</i>	36a-850
Sec. 3	<i>October 1, 2021</i>	New section
Sec. 4	<i>October 1, 2020</i>	New section

**HED**      *Joint Favorable*

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*The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.*

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### **OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

### **Explanation**

The bill, which adds requirements for private student loan servicers, is not anticipated to have any fiscal impact to the state or municipalities.

### **The Out Years**

**State Impact:** None

**Municipal Impact:** None

**OLR Bill Analysis****SB 716*****AN ACT CONCERNING THE FEDERAL STUDENT LOAN BORROWERS' BILL OF RIGHTS ACT OF 2019.*****SUMMARY**

This bill requires private student loan servicers to provide certain information to private student loan borrowers and cosigners regarding (1) borrower and cosigner rights and responsibilities, (2) cosigner release eligibility, and (3) the cosigner release application process.

The bill prohibits any student loan servicer licensee or control person from engaging in an abusive act or practice when servicing a student loan, as described in the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203).

It also allows student loan borrowers, classes of student loan borrowers, or legal representatives of either to bring a lawsuit against a student loan servicer for violating the state's requirements for student loan servicers.

The bill also expands the definition of "servicing" in state student loan servicer law to include (1) maintaining account records for and communicating with a student loan borrower during the period when no scheduled loan payments are required and (2) interacting with a student loan borrower to facilitate the loan, including assisting them from defaulting on loan obligations. Under current law, "servicing" under this law means, among other things, (1) receiving scheduled periodic payments from a student loan borrower under a student education loan's terms or (2) applying the principal and interest payments and other payments to the amounts received from a student loan borrower, as under a student education loan's terms. The bill narrows this definition to require both these actions in order to be

considered servicing.

EFFECTIVE DATE: October 1, 2021

## **DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT**

The bill prohibits any student loan servicer licensee or control person from engaging in an abusive act or practice when servicing a student loan, as described in the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203, § 1031).

Under the act, an act or practice is abusive if it materially interferes with a consumer's ability to understand a term or condition of a consumer financial product or service. It is also abusive if it takes unreasonable advantage of (1) a lack of understanding on the consumer's part of the material risks, costs, or conditions of the product or service; (2) the consumer's inability to protect his or her own interests in selecting or using a consumer financial product or service; or (3) the consumer's reasonable reliance on a covered person to act in his or her best interests.

## **PRIVATE STUDENT LOAN SERVICER NOTIFICATION REQUIREMENTS**

### ***Borrower and Cosigner Rights and Responsibilities***

The bill requires a private loan servicer to provide certain information to student loan borrowers and cosigners about their rights and responsibilities (1) before sending the first loan billing statement or (2) immediately after receiving a transferred or assigned private education loan. This information includes:

1. how the loan obligation will appear on a cosigner's consumer report;
2. how cosigners will be notified if the loan becomes delinquent, including how they can cure the delinquency to avoid a negative credit rating; and
3. cosigner release eligibility, including the number of on-time

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payments and other criteria required for release approval.

Under the bill, a "cosigner" is any individual who is liable for the obligation of another without compensation, regardless of how the contract or instrument designates the obligation. But it does not include an obligation under a private education loan extended to consolidate a consumer's pre-existing private education loans. A cosigner includes any person whose signature is requested as a condition to grant credit or forbear on collection but does not include an individual's spouse whose signature is needed to perfect the security interest in a loan (15 U.S.C. § 1650(a)).

A "consumer report" is any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected to serve as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes; (2) employment purposes; or (3) any other purpose specified by federal law (15 U.S.C. § 1681a).

A "private education loan" is a loan provided by a private education lender that is (1) not made, insured, or guaranteed under Title IV of the Higher Education Act of 1965 and (2) expressly issued for postsecondary educational expenses to a borrower, regardless of whether it is provided through the educational institution that the student attends or directly to the borrower for the private educational lender. It does not include a credit extension under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage, or any other loan secured by real property or dwelling (15 U.S.C. § 1650(a)).

### ***Annual Notification***

Under the bill, a private student loan servicer must annually send written notice to all private student loan borrowers and cosigners with

information on cosigner release, including the (1) criteria for release approval and (2) release application process.

### ***Cosigner Release***

***Eligibility.*** The bill requires the private loan servicer, upon the borrower satisfying the applicable consecutive on-time payment requirement, to send in writing to the borrower and cosigner (1) a notification that the borrower satisfied the on-time payment requirement and the cosigner may be eligible for release and (2) information on the cosigner release application process and any additional criteria that a cosigner must satisfy to be eligible for release. The loan servicer must send the information via mail (e.g. the U.S. Postal Service), or email if the student has elected to receive electronic communications from the servicer.

***Incomplete Application.*** Under the bill, the servicer must provide written notification to the student loan borrower and cosigner if the cosigner release application is incomplete and provide (1) a description of the missing or additional information required and (2) the date by which the borrower and cosigner must provide the missing information.

***Approval or Denial of Application.*** The bill requires the servicer, within 30 days after receiving a cosigner release application, to provide the borrower and cosigner written notice of the application's approval or denial. If the application was denied, the notice must inform the borrower and cosigner that they can request all documents and information used in the decision, including (1) the credit score threshold the servicer used, (2) the borrower's or cosigner's consumer report and credit score, and (3) any other relevant or specific document. The servicer must also provide the borrower and cosigner with any adverse action notices required under federal law if the denial was based on any information in a consumer report.

Under the bill, the servicer must also include information on cosigner release, including the (1) criteria for release approval and (2) release

application process, in any response to a cosigner's release application.

## **COSIGNER RELEASE APPLICATIONS**

### ***Servicer Response***

The bill requires private student loan servicers, when responding to a cosigner release application, to refrain from the following:

1. imposing any restrictions on a borrower or cosigner that may permanently prevent them from qualifying for a cosigner release, including restricting the number of times a borrower or cosigner can apply, and
2. requiring a borrower to make more than 12 consecutive on-time payments as part of the eligibility criteria for cosigner release.

Servicers must also refrain from imposing any negative consequences on a borrower or cosigner during the 60 days after issuing a notice for incomplete information or until a final decision for cosigner release is made. "Negative consequences" include (1) imposing additional eligibility criteria, (2) negative credit reporting, (3) losing eligibility for cosigner release, (4) late fees, (5) interest capitalization, or (6) other financial penalties or injury.

### ***Consecutive On-Time Payment Requirement***

Under the bill, a private student loan servicer must consider any borrower who paid the equivalent of 12 months of principal and interest during any 12-month period as satisfying the consecutive on-time payment requirement, even if the borrower did not make monthly payments during the 12-month period.

The bill requires a servicer, upon receiving a borrower's or cosigner's request for a change that results in restarting the count of consecutive on-time payments required for cosigner release eligibility, to provide the borrower and cosigner (1) written notification about the change's impact on cosigner eligibility and (2) a chance to withdraw or reverse the change to avoid it.

***Cosigner Appeal of Release Denial***

The bill requires the student loan servicer to provide a borrower or cosigner (1) the right to request an appeal of a release denial; (2) an opportunity to submit additional information or documentation that the borrower has the ability, willingness, and stability to make the payment obligations; and (3) the right to request that a different loan servicer review and make a determination on the release application.

**RECORD MANAGEMENT**

The bill requires a student loan servicer to establish and maintain a comprehensive record management system designed to ensure the accuracy, integrity, and completeness of cosigner release application data and information. The system must include (1) the number of applications received, (2) the application approval and denial rate, and (3) the primary reasons for application denial.

**RELEASE OF DISABLED COSIGNER**

If a cosigner has a total and permanent disability, and unless otherwise expressly prohibited under the loan agreement terms, the bill requires a private student loan servicer to (1) release the cosigner from his or her loan repayment obligation upon receiving notification of the disability and (2) refrain from requiring a new cosigner to be added to the loan after releasing the original cosigner. The cosigner's disability must be determined by a federal or state agency or doctor of medicine or osteopathy legally authorized to practice in the state.

**ACCESS TO RECORDS AND DOCUMENTS**

The bill requires private student loan servicers to provide the cosigner with access to the same loan documents and records available to the borrower. Under the bill, if the borrower has electronic access to private loan documents and records, the servicer must extend this same access to the cosigner.

**CIVIL ACTION**

The bill allows private student loan borrowers, or their legal representative, to bring a lawsuit in Superior Court for violations of

state student loan servicer requirements. It also allows them to bring a class action lawsuit in Superior Court on behalf of themselves and other similarly situated borrowers to recover damages. The borrower does not have to exhaust administrative remedies before bringing the action.

The bill allows a court, after finding that a student loan servicer committed the alleged violations, to award actual damages, reasonable attorney's fees, court costs, punitive damages, property restitution, and appropriate equitable relief. Under the bill, the court must award treble damages to the borrower if it finds that the student loan servicer engaged in conduct that substantially interfered with (1) the borrower's right to an alternative payment arrangement, loan forgiveness, cancellation, or student loan discharge or (2) another financial benefit set out in the borrower's promissory note or the Higher Education Act of 1965 or its regulations. The remedies are in addition to any other remedies state or federal law provide.

**COMMITTEE ACTION**

Higher Education and Employment Advancement Committee

Joint Favorable

Yea 22    Nay 0    (03/18/2021)