

2020 Regular Session

HOUSE BILL NO. 507

BY REPRESENTATIVE DUPLESSIS

CREDIT/CONSUMER LOANS: Provides relative to private student loans

1 AN ACT

2 To enact Chapter 21 of Title 6 of the Louisiana Revised Statutes of 1950, to be comprised

3 of R.S. 6:1381 through 1388, relative to the regulation of private student loan

4 lenders; to provide for definitions; to provide for applicability; to provide for

5 enhanced disclosure; to require certain information be disclosed; to require

6 notification; to provide for cosigner release; to provide for restrictions on lenders;

7 to allow for appeals; to require a record management system; to provide for total or

8 permanent disabilities; to provide for access to records and documents; to prohibit

9 acceleration of payments; to provide for death of the cosigner; to provide for

10 bankruptcy of the cosigner; to provide for penalties; to provide for damages; and to

11 provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. Chapter 21 of Title 6 of the Louisiana Revised Statutes of 1950,

14 comprised of R.S. 6:1381 through 1388, is hereby enacted to read as follows:

15 CHAPTER 21. PROTECTIONS FOR PRIVATE STUDENT LOAN BORROWERS

16 AND COSIGNERS

17 §1381. Definitions

18 As used in this Chapter, the following definitions apply:

19 (1) "Borrower" or "student loan borrower" means a person who has received

20 or agreed to pay a student loan for his own educational expenses.

1 (2)(a) "Cosigner" means either of the following:

2 (i) Any individual who is liable for the obligation of another without
3 compensation, regardless of how designated in the contract or instrument with
4 respect to that obligation, including an obligation under a private education loan
5 extended to consolidate a borrower's pre-existing private education loans.

6 (ii) Any person, the signature of which, is requested as a condition to grant
7 credit or to forbear on collection.

8 (b) The term does not include a spouse of an individual described in Item
9 (a)(i) of this Subsection, the signature of whom is needed to perfect the security
10 interest in a loan.

11 (3) "Private education lender" means either of the following:

12 (a) Any person or entity engaged in the business of securing, making, or
13 extending postsecondary education loans.

14 (b) Any holder of a postsecondary education loan.

15 (4)(a) "Private education loan" means an extension of credit that meets all
16 of the following criteria:

17 (i) Is not made, insured, or guaranteed under 20 U.S.C. 1070 et seq.

18 (ii) Is extended to a consumer expressly, in whole or in part, for
19 postsecondary educational expenses, regardless of whether the loan is provided by
20 the educational institution that the student attends.

21 (b) The term does not include:

22 (i) An open-end credit or any loan that is secured by real property or a
23 dwelling.

24 (ii) An extension of credit in which the covered educational institution is the
25 creditor, and either of the following criteria is met:

26 (aa) The term of the extension of credit is ninety days or less.

27 (bb) An interest rate will not be applied to the credit balance and the term of
28 the extension of credit is one year or less, even if the credit is payable in more than
29 four installments.

1 §1382. Applicability

2 A. Any person or entity that enters into a contract or subcontract with a
3 private education lender or servicer to perform the servicing of a private education
4 loan shall fulfill the obligations of the private education lender pursuant to this
5 Chapter.

6 B. Any person or entity described in R.S. 6:1381(1) shall be jointly and
7 severally liable for the actions of the person or entity in fulfilling the obligations of
8 the postsecondary educational lender or servicer pursuant to this Section.

9 §1383. Enhanced disclosures for cosigned loans; required notifications

10 A. Prior to the origination of a private education loan, the private education
11 lender shall provide to any cosigner applicant information about the rights and
12 responsibilities of the cosigner of the loan, which is to include all of the following:

13 (1) Information about how the private education loan obligation will appear
14 on the cosigner's credit.

15 (2) Information about how the cosigner will be notified if the private
16 education loan becomes delinquent, including how the cosigner can cure the
17 delinquency in order to avoid negative credit furnishing and a loss of cosigner
18 release eligibility.

19 (3) Information about eligibility for release of the cosigner's obligation on
20 the private education loan, including the number of consecutive on-time payments,
21 and any other criteria, required to approve the release of the cosigner from the loan
22 obligation.

23 B. Lenders shall send borrowers and cosigners annual written notices
24 containing information about cosigner release, including criteria the lender requires
25 to approve the release of the cosigner from the loan obligation and the process for
26 applying for cosigner release.

27 C. Once the borrower has met the required number of consecutive, on-time
28 payments necessary to be eligible for cosigner release, the lender shall send the
29 borrower and cosigner a written notification by United States mail and by electronic

1 mail, where a borrower has elected to receive electronic communications from the
2 lender, informing the borrower and cosigner that he has met the required number of
3 consecutive, on-time payments necessary to be eligible for cosigner release. The
4 notification shall also include information about any additional criteria to qualify for
5 cosigner release and the procedure to apply for cosigner release.

6 D. A lender shall provide written notice to any borrower who applies for
7 cosigner release but whose application is incomplete. The written notice shall include
8 a description of the information needed to consider the application complete and the
9 date by which the applicant should furnish the missing information.

10 E. After a borrower submits an application for cosigner release, within thirty
11 days, the lender shall send the borrower and cosigner a written notice that informs
12 the borrower and cosigner whether the cosigner release application has been
13 approved or denied. If the lender denies a request for cosigner release, the borrower
14 has the right to request all documents and information used in the determination,
15 including the credit score threshold used by the lender, the borrower's consumer
16 report, the borrower's credit score, and any other documents specific to the borrower.
17 The lender shall also provide any adverse action notices required under applicable
18 federal law if the denial was based in whole or in part on any information contained
19 in a consumer report.

20 §1384. Cosigner release

21 A. In response to any written or oral request for cosigner release, lenders
22 shall send the information described in R.S. 6:1383(B).

23 B. Lenders shall not impose any restrictions that may permanently bar a
24 borrower from qualifying for cosigner release, including restricting the number of
25 times a borrower may apply for cosigner release.

26 C. Lenders shall not impose any negative consequences on any borrower or
27 cosigner during the sixty days following the issuance of the notice required pursuant
28 to R.S. 6:1383(D), or until the lender makes a final determination about a borrower's
29 cosigner release application. For the purpose of this Subsection, "negative

1 consequences" includes, but is not limited to, the imposition of additional eligibility
2 criteria, negative credit reporting, lost eligibility for cosigner release, late fees,
3 interest capitalization, or other financial injury.

4 D. Lenders shall not require greater than twelve consecutive, on-time
5 payments as criteria for cosigner release. Any borrower who has paid the equivalent
6 of twelve months of principal and interest payments within any twelve-month period
7 will be considered to have satisfied the consecutive, on-time payment requirement,
8 even if the borrower has not made payments monthly during the twelve-month
9 period.

10 E. If a borrower or cosigner requests a change in terms that restarts the count
11 of consecutive, on-time payments required for cosigner release, the lender shall
12 notify the borrower and cosigner in writing of the impact of the requested change and
13 provide the borrower or cosigner the right to withdraw or reverse the request to avoid
14 restarting the count.

15 F. The borrower has the right to request an appeal of the lender's
16 determination to deny the cosigner release application, and the lender shall permit
17 such borrower to submit additional documentation evidencing that the borrower has
18 the ability, willingness, and stability to handle his payment obligations.

19 G. A lender shall establish and maintain a comprehensive record
20 management system, reasonably designed to ensure the accuracy, integrity, and
21 completeness of data and other information about cosigner release applications. This
22 system shall include the number of cosigner release applications received, the
23 approval and denial rate, and the primary reasons for any denial.

24 H. If the cosigner has a total and permanent disability, as determined by any
25 federal agency, state agency, or doctor of medicine or osteopathy legally authorized
26 to practice in a state, the lender shall release the cosigner from the cosigner's
27 obligation to repay the loan upon receiving a notification of the cosigner's total and
28 permanent disability. The lender shall not require a new cosigner to be added to the
29 loan after the original cosigner has been released from the loan.

1 §1385. Cosigner access to records and documents

2 A. A lender shall provide the cosigner of a private education loan with
3 access to all documents or records, related to the cosigned private education loan, to
4 which the borrower has access.

5 B. If a lender provides electronic access to documents and records for a
6 borrower, it shall provide equivalent electronic access to the cosigner.

7 §1386. Prohibition on acceleration of payments on private student loans

8 A. Except as provided for in Subsection B of this Section, a private
9 education loan executed after the date of enactment of this Chapter may not include
10 a provision that permits the private educational lender to accelerate, in whole or in
11 part, payments on the private education loan.

12 B. A private education loan may include a provision that permits
13 acceleration of the loan in cases of payment default.

14 C. A lender shall not place any loan or account into default or accelerate a
15 loan for any reason other than for failure to pay.

16 §1387. Cosigner death; cosigner bankruptcy

17 A. In the event of the death of a cosigner, the lender shall not attempt to
18 collect against the cosigner's estate, other than for failure to pay.

19 B. Upon receiving notification of the death or bankruptcy of a cosigner,
20 when the loan is not more than sixty days delinquent at the time of the notification,
21 the lender shall not change any terms or benefits under the promissory note,
22 repayment schedule, repayment terms, or monthly payment amount or any other
23 provision associated with the loan.

24 §1388. Penalties

25 A. In addition to penalties as may otherwise be applicable by law, the
26 commissioner of the Office of Financial Institutions may, after notice and hearing,
27 require any person found violating the provisions of this Chapter, or any rules or
28 regulations promulgated in association with this Chapter, to pay a penalty for each
29 violation, the sum of which is not to exceed the greater of the following:

- 1 (1) Ten thousand dollars for each offense.
- 2 (2) A multiple of two times the aggregate damages attributable to the
3 violations.
- 4 (3) A multiple of two times the aggregate economic gain attributable to the
5 violations.
- 6 B. Any borrower or cosigner who suffers damage as a result of the failure
7 of a person or entity described in R.S. 6:1382 to comply with this Chapter, may bring
8 an action on his own behalf, and on behalf of a similarly situated class of consumers,
9 against that person or entity to recover or obtain any of the following:
- 10 (1) Actual damages, but in no case, shall the total award of damages be less
11 than five hundred dollars.
- 12 (2) An order enjoining the methods, acts, or practices that constitute the
13 violation.
- 14 (3) Restitution of property.
- 15 (4) Punitive damages.
- 16 (5) Attorney fees.
- 17 (6) Any other relief that the court deems proper.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 507 Original

2020 Regular Session

Duplessis

Abstract: Requires private education lenders to follow certain regulations in order to inform potential cosigners of the implications of being a cosigner, to keep active cosigners aware of the status of the loan, and to allow a procedure for a cosigner to ultimately be released from the loan.

Proposed law defines "private education loan", "private education lender", "borrower" or "student loan borrower", and "cosigner".

Proposed law applies to any person or entity that enters into a contract or subcontract with a private education lender (lender) or servicer to perform the servicing of a private education loan (loan).

Proposed law requires borrowers to be jointly and severally liable for the actions of the person or entity in fulfilling the obligations of the postsecondary educational lender or servicer.

Proposed law requires the lender to provide all cosigners applicants information about their rights and responsibilities as a cosigner. All of the following must be included in the information:

- (1) Information about how the loan obligation will appear on the cosigner's credit.
- (2) Information about how the cosigner will be notified if the loan becomes delinquent and how the cosigner can cure the delinquency to avoid negative credit furnishings and a loss of the cosigner release eligibility.
- (3) Information about eligibility for release of the cosigner's obligation on the loan including the number of consecutive, on-time payments, and any other criteria, required to approve the release.

Proposed law requires lenders to send the following notifications:

- (1) Annual written notices to borrowers and cosigners containing information about cosigner release, including the criteria the lender requires to approve the release of the cosigner from the loan and the process for applying for cosigner release.
- (2) A notification to borrowers and cosigners that the borrower has met the required number of consecutive, on-time payments to be eligible for cosigner release, including information about any additional criteria required to qualify for cosigner release and the process for applying for cosigner release.
- (3) Written notice to the borrower that an application for cosigner release is incomplete, including a description of the information needed to consider the application complete and the date by which the applicant should furnish the missing information.
- (4) A written notice, to the borrower and cosigner, to be sent within 30 days after an application for cosigner release is submitted, stating whether the application has been approved or denied, including any adverse action notifications required under applicable present law.

Proposed law allows a borrower who is denied a request for cosigner release to request all documents and information used in that determination.

Proposed law requires lenders to provide requested information provided for in proposed law.

Proposed law prohibits lenders from doing any of the following:

- (1) Imposing any restrictions that may permanently bar a borrower from qualifying for cosigner release.
- (2) Imposing any negative consequences on any borrower or cosigner during the sixty days following the issuance of the notice required under proposed law or until the lender makes a determination about a borrower's application for cosigner release.
- (3) Requiring more than 12 consecutive, on-time payments as criteria for a cosigner release.

Proposed law provides that a borrower who has paid the equivalent of 12 months of principal and interest payments within any 12-month period will be considered to have satisfied the consecutive, on-time payment requirement, even if the payments weren't made monthly.

If a borrower or cosigner requests a change in terms that restarts the count of consecutive, on-time payments, proposed law requires the lender to notify the borrower and cosigner, in

writing, of the impact of the requested change and provide them the right to withdraw or reverse the request.

Proposed law gives the borrower the right to request an appeal of the lender's determination to deny the cosigner release application and to submit additional documentation evidencing that the borrower has the financial capacity to handle the obligation.

Proposed law requires a lender to establish and maintain a comprehensive record management system containing certain data and information about cosigner release applications.

If the cosigner has a total and permanent disability proposed law requires the lender to release the cosigner from his obligation to repay the loan, and the lender is not required to replace the cosigner.

Proposed law requires a lender to provide a cosigner of a loan with access to all documents or records related to the loan that are available to the borrower.

If a lender provides electronic access to documents and records for a borrower, proposed law requires the lender to provide equivalent electronic access to the cosigner.

Proposed law provides that a loan executed after the enactment of proposed law, may not include a provision that permits the lender to accelerate, in whole or in part, payments on the loan, except in cases of default.

Proposed law prohibits a lender from placing any loan or account into default or accelerate a loan for any reason, other than default.

In the event of the cosigner's death, proposed law prohibits the lender from attempting to collect against the cosigner's estate for any reason, except failure to pay.

Upon receiving notification of the death or bankruptcy of the cosigner, when the loan is not more than 60 days delinquent, proposed law prohibits the lender from changing any terms or provisions associated with the loan.

In addition to applicable penalties in present law, proposed law allows the commissioner of the Office of Financial Institutions, after notice and hearing, to require a person in violation of proposed law to pay a penalty for each violation.

Proposed law provides that the sum of these penalties is not to exceed the greater of the following:

- (1) \$10,000 for each offense.
- (2) A multiple of two times the aggregate damages attributable to the violations.
- (3) A multiple of two time the economic gain attributable to the violations.

Proposed law allows any borrower or cosigner who suffers damage as a result of the failure of a person or entity described in proposed law, to comply with proposed law, to bring an action of his own behalf and on the behalf of a similarly situated class of consumers against that person or entity and to recover any of the following:

- (1) Actual damages of at least \$500.
- (2) An order enjoining the methods, acts, or practices of the person or entity.
- (3) Restitution of property.

- (4) Punitive damages.
- (5) Attorney fees.
- (6) Any other relief that the court deems proper.

(Adds R.S. 6:1381-1388)