



SPONSOR: Sen. S. McBride & Rep. Phillips & Rep. K. Johnson &
Rep. Wilson-Anton
Sens. Gay, Hansen, Lockman, Pinkney, Poore, Sokola,
Sturgeon, Townsend; Reps. Baumbach, Griffith, Lambert,
Lynn, Morrison, Parker Selby

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 132

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE STUDENT LOAN BORROWER
BILL OF RIGHTS ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subtitle II, Title 6 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

Chapter 25J. Student Loan Borrower Bill of Rights Act.

§ 2501J. Title.

This chapter may be cited as the Student Loan Borrower Bill of Rights Act.

§ 2502J. Definitions.

As used in this chapter:

(1) “Consumer Protection Unit” means the Consumer Protection Unit of the Fraud and Consumer Protection
Division of the Department of Justice.

(2) “Consumer report” means as provided in 15 U.S.C. § 1681a.

(3) “Cosigner” means as provided in 15 U.S.C. § 1650(a).

(4) “Negligently” means acting with negligence. For purposes of this paragraph (3), “negligence” means as
defined in § 231(d) of Title 11.

(5) “Servicing” means any of the following activities related to a student education loan of a student loan
borrower:

a. Receiving scheduled periodic payments from a student loan borrower or notification of the payments
under the terms of a student education loan.

b. Applying payments of principal and interest, and such other payments with respect to the amounts
received from a student loan borrower, as may be required under the terms of a student education loan.

c. During a period when a payment on a student education loan is not required, doing all of the following:

1. Maintaining account records for the student education loan.

2. Communicating with the student loan borrower regarding the student education loan, on behalf of the student education loan's holder.

d. Interacting with a student loan borrower as follows:

1. Related to the student loan borrower's student education loan, including engaging in activities to help the student loan borrower avoid default on obligations arising from the student education loan.

2. To facilitate the activities described in paragraphs (5)a. through c. of this section.

e. Performing other administrative services with respect to a student education loan, on behalf of the student education loan's holder.

(6)a. "Student education loan" means an extension of credit made primarily for personal use to finance higher-education-related expenses.

b. "Student education loan" includes any of the following used in whole or part to finance higher-education-related expenses:

1. Loans, including income share agreements.

2. Deferred tuition plans.

3. Retail installment contracts.

c. "Student education loan" does not include any of the following:

1. An isolated personal loan made by an individual to another individual for higher-education-related expenses.

2. Credit that is secured by real property.

3. Open-ended credit.

4. Wage assignments.

(7) "Student loan borrower" means any of the following:

a. A resident of this State who has received or agreed to pay a student education loan.

b. A person who shares responsibility for repaying a student education loan with a person described in paragraph (7)a. of this section.

(8) "Student Loan Ombudsperson" means the individual appointed under § 2509J(a) of this title.

(9) "Student loan servicer" means a person engaged in the business of servicing student education loans in this State.

§ 2503J. Scope.

To the extent this chapter is preempted by federal law, this chapter does not apply to a student loan servicer that is any of the following:

(1) A bank or credit union.

(2) A wholly owned subsidiary of a bank or credit union.

(3) An operating subsidiary of a bank or credit union where each owner of the operating subsidiary is wholly owned by the same bank or credit union.

(4) A savings association.

§ 2504J. Student loan servicer duties.

(a) As used in this section, “nonconforming payment” means a payment on a student education loan of a student loan borrower that is different than the required payment.

(b) To the extent that state regulation is not preempted by federal law, a federal student education loan agreement, or a contract between the Federal Government and a student loan servicer, a student loan servicer shall do all of the following:

(1) On receipt of a written inquiry from a student loan borrower or the representative of a student loan borrower, respond by doing all of the following

a. Acknowledging receipt of the written inquiry within 10 days.

b. Providing, within 30 days after receiving the inquiry, information relating to the inquiry and, if applicable, the action the student loan servicer will take to correct the student loan borrower's account or an explanation of the student loan servicer's position that the borrower's account is correct.

(2) Inquire of a student loan borrower how to apply an overpayment or prepayment to a student education loan.

a. A student loan borrower's direction on how to apply an overpayment or prepayment to a student education loan must stay in effect for any future overpayments or prepayments during the term of a student education loan until the student loan borrower provides different directions.

b. For purposes of this paragraph (b)(2), “overpayment” or “prepayment” means a payment on a student education loan in excess of the monthly amount due from a student loan borrower on a student education loan.

(3) Apply a partial payment or underpayment in a manner that minimizes late fees and negative credit reporting.

79 a. When loans on a student loan borrower's account have an equal stage of delinquency, a student loan
80 servicer shall apply a partial payment or underpayment to satisfy as many individual loan payments as possible on
81 a student loan borrower's account.

82 b. For purposes of this paragraph (b)(3), "partial payment" or "underpayment" means a payment on a
83 student education loan account that contains multiple individual loans in an amount less than the amount necessary
84 to satisfy the outstanding payment due on all loans in the student loan account.

85 (4) If there is a sale, assignment, or other transfer of the servicing of a student education loan that results in a
86 change in the identity of the student loan servicer to whom a student loan borrower is required to send payments or
87 direct any communication concerning the student education loan, the prior student loan servicer shall do all of the
88 following:

89 a. As a condition of the sale, assignment, or transfer, require the new student loan servicer to honor all
90 benefits originally represented as available to the student loan borrower during the repayment of the student
91 education loan and preserve the availability of the benefits, including any benefits for which the student loan
92 borrower has not yet qualified.

93 b. Within 45 days after the sale, assignment, or transfer, transfer to the new student loan servicer all
94 information regarding the student loan borrower, the account of the student loan borrower and the student
95 education loan of the student loan borrower, including the repayment status of the student loan borrower and any
96 benefits associated with the student education loan of the student loan borrower.

97 c. Complete the sale, assignment, or transfer of the servicing of the student education loan at least 7 days
98 before the next payment on the loan is due.

99 (5) If a student loan servicer that obtains the right to service a student education loan, adopt policies and
100 procedures to verify that the student loan servicer has received all information regarding the student loan borrower, the
101 account of the student loan borrower, and the student education loan of the student loan borrower, including the
102 repayment status of the student loan borrower and any benefits associated with the student education loan of the
103 student loan borrower. The Student Loan Ombudsperson may investigate these policies and procedures under this
104 chapter.

105 (6) Evaluate a student loan borrower for a repayment program based on income before placing the student
106 loan borrower in forbearance or default, if a repayment program based on income is available to the student loan
107 borrower.

(7) Before sending the first billing statement on a student education loan with a cosigner or immediately on receipt of a student education loan with a cosigner following the transfer or assignment of the student education loan with a cosigner, provide to the student loan borrower, and to any cosigner of the student education loan, information concerning the rights and responsibilities of the student loan borrower and cosigner, including information regarding all of the following:

a. How the student education loan obligation will appear on the cosigner's consumer report.

b. How the cosigner will be notified if the student education loan becomes delinquent, including how the cosigner can cure the delinquency in order to avoid negative credit furnishing and loss of cosigner release eligibility.

c. Eligibility for release of the cosigner's obligation on the student education loan, including number of on-time payments and any other criteria required to approve the release of the cosigner from the loan obligation.

(8) Send annual written notice to all student loan borrowers and cosigners regarding information about cosigner release, including the criteria the student education loan servicer requires to approve the release of a cosigner from a student education loan obligation and the process for applying for cosigner release.

(9)a. On satisfaction by the student loan borrower of the applicable consecutive on-time payment requirement for purposes of cosigner release eligibility, send, in writing, to the student loan borrower and cosigner all of the following:

1. A notification that the consecutive on-time payment requirement has been satisfied and that the cosigner may be eligible for cosigner release.

2. Information relating to the procedure for applying for cosigner release and any additional criteria that a cosigner must satisfy in order to be eligible for cosigner release.

b.1. Except as provided by paragraph (b)(9)b.2. of this section, the notification and information required under paragraph (b)(9)a. of this section must be sent by United States mail.

2. If a student loan borrower or cosigner has elected to receive electronic communications from the student loan servicer, the notification and information required under paragraph (b)(9)a. of this section may be sent by electronic mail.

(10) If an application for a cosigner release is incomplete, provide, in writing, all of the following:

a. Notice to the student loan borrower and cosigner that the application is incomplete.

b. A description of the information that is missing or the additional information that is needed to consider the application complete and the date by which the student loan borrower or cosigner are required to provide the information.

(11) Not later than 30 days following the submission of an application for cosigner release, send to the student loan borrower and cosigner a written notice of the decision that the application has been approved or denied.

a. If the application for cosigner release has been denied, the written notice must inform the student loan borrower and cosigner that the student loan borrower and cosigner have the right to request all documents and information used by the student loan servicer in the student loan servicer's decision to deny the application, including all of the following:

1. The credit score threshold used by the student loan servicer.

2. The consumer report of the student loan borrower or cosigner.

3. The credit score of the student loan borrower or cosigner.

4. Any other document that is relevant or specific to the student loan borrower or cosigner.

b. The student loan servicer shall provide the student loan borrower and cosigner with any adverse action notices required under federal law if the denial of the application was based in whole or in part on any information contained in a consumer report.

(12) Include the information described in paragraph (b)(8) of this section in any response to an application for cosigner release.

(13) Refrain from imposing any restrictions on a student loan borrower or cosigner that may permanently prevent the student loan borrower or cosigner from qualifying for a cosigner release, including restrictions on the number of times a student loan borrower or cosigner may apply for cosigner release.

(14) Refrain from imposing any negative consequences on a student loan borrower or cosigner during the 60 days following issuance of the notice described in paragraph (b)(10) of this section, or until a final decision concerning a student loan borrower or cosigner's application for cosigner release is made. For purposes of this paragraph (b)(14), "negative consequences" includes the imposition of additional eligibility criteria, negative credit reporting, lost eligibility for a cosigner release, late fees, interest capitalization, or other financial penalties or injury.

(15) Refrain from requiring a student loan borrower to make more than 12 consecutive on-time payments as part of the eligibility criteria for cosigner release. The student loan servicer shall consider any student loan borrower who has paid the equivalent of 12 months of principal and interest during any 12-month period to have satisfied the

consecutive on-time payment requirement, even if the student loan borrower has not made payments monthly during the 12-month period.

(16) On receipt of a request by a student loan borrower or cosigner to a change that results in restarting the count of consecutive on-time payments required for cosigner release eligibility, provide to the student loan borrower and cosigner written notification of the impact of the change on cosigner release eligibility and an opportunity to withdraw or reverse the change for purposes of avoiding the impact.

(17) Provide a student loan borrower or cosigner with all of the following:

a. The right to request an appeal of a determination to deny a cosigner release application.

b. An opportunity to submit additional information or documentation evidencing that the student loan borrower has the ability, willingness, and stability to make the student loan borrower's payment obligations.

c. The right to request that a different employee of the student loan servicer review and make a determination on the application for a cosigner release.

(18) Establish and maintain a comprehensive record management system reasonably designed to ensure the accuracy, integrity, and completeness of data and other information about cosigner release applications. The system must include all of the following:

a. The number of cosigner release applications received.

b. The approval and denial rate of the applications.

c. The primary reasons for denial of the applications.

(19) If a cosigner has a total and permanent disability, as determined by any federal or state agency or doctor of medicine or osteopathy legally authorized to practice in the state, and unless otherwise expressly prohibited under the terms of a student education loan agreement, do all of the following:

a. Release the cosigner from the cosigner's obligation to repay the student education loan on receipt of notification that the cosigner has a total and permanent disability.

b. Refrain from requiring that a new cosigner be added to the student education loan after the original cosigner has been released from the student education loan under paragraph (b)(19)a. of this section.

(20) Provide the cosigner of a student education loan with access to the same documents and records associated with the student education loan that are available to the student loan borrower of the student education loan.

(21) If a student loan borrower has electronic access to documents and records associated with a student education loan, provide equivalent electronic access to the documents and records to the cosigner of the student education loan.

(22) On request of the student loan borrower or cosigner, restrict the non-requesting party's access to the requesting party's contact information.

(23) Provide a student loan borrower or cosigner with prompt notice if the student loan servicer changes the address to which the student loan borrower or cosigner needs to send a payment.

(24) Not charge a penalty to a student loan borrower or cosigner if a payment on a student education loan is received at an address used for payments for a period of 90 days after the change of an address used for payments.

(25) Provide a written payment history to a student loan borrower or cosigner on request, at no cost, and within 21 days of receiving the request.

§ 2505J. Student loan servicer prohibited acts.

A student loan servicer may not do any of the following:

(1) Directly or indirectly employ a scheme, device, or artifice intended to defraud or mislead a student loan borrower.

(2) Engage in an unfair or deceptive practice toward a person or misrepresent or omit material information in connection with the servicing of a student education loan, including misrepresenting the amount, nature, or terms of a fee or payment due or claimed to be due on a student education loan, the terms, and conditions of the student education loan agreement or the student loan borrower's obligations under the student education loan.

(3) Engage in abusive acts or practices when servicing a student education loan in this State. An act or practice is abusive in connection with the servicing of a student education loan if the act or practice does any of the following:

a. Materially interferes with the ability of a student loan borrower to understand a term or condition of a student education loan.

b. Takes advantage of any of the following:

1. A lack of understanding on the part of a student loan borrower of the material risks, costs, or conditions of the student education loan.

2. The inability of a student loan borrower to protect the student loan borrower's interests when selecting or using any of the following:

A. A student education loan.

B. A feature, term, or condition of a student education loan.

3. The reasonable reliance by the student loan borrower on a person engaged in servicing a student education loan to act in the interests of the borrower.

c. Any other act or practice that is abusive.

(4) Obtain property by fraud or misrepresentation.

(5) Misapply or apply student education loan payments to the outstanding balance of a student education loan.

(6) Provide inaccurate information to a credit bureau.

(7) Fail to report a favorable or unfavorable payment history of a student loan borrower to a nationally recognized consumer credit bureau at least annually if the student loan servicer regularly reports information to a credit bureau.

(8) Refuse to communicate with an authorized representative of a student loan borrower who provides a written authorization signed by the student loan borrower. A student loan servicer may adopt procedures reasonably related to verifying that the representative is authorized to act on behalf of the student loan borrower.

(9) Negligently make a false statement or make an omission of a material fact in connection with any information or report filed with a governmental agency or in connection with an investigation conducted by the Student Loan Ombudsperson or another governmental agency.

(10) Except as provided in federal law, federal student loan agreements, or a contract between the federal government and a student loan servicer, fail to properly evaluate a student loan borrower for an income-driven or other student loan repayment program or for eligibility for a public service loan forgiveness program before placing the student loan borrower in forbearance or default, if an income-driven repayment or other program is available to the student loan borrower.

(11) Fail to respond within 15 days to a communication from the Student Loan Ombudsperson, or within a shorter reasonable time as the Student Loan Ombudsperson may request in the communication.

(12) Fail to respond within 15 days to a student loan borrower complaint submitted to the servicer by the Student Loan Ombudsperson. If necessary, a student loan servicer may request additional time, up to 45 days, if the request is accompanied by an explanation of why additional time is reasonable and necessary.

§ 2506J. Student loan servicer record retention requirements.

(a) To the extent state regulation is not preempted by federal law, a student loan servicer shall maintain adequate records of each student education loan transaction for at least 7 years following the final payment on a student education loan or the assignment of a student education loan, whichever occurs first. The Student Loan Ombudsperson may order student loan servicers to maintain records for a period longer than 7 years.

(b) Within 5 business days of receipt of a request for student education loan records from the Student Loan Ombudsperson, a student loan servicer shall make the records available to the Student Loan Ombudsperson or shall send

the records to the Student Loan Ombudsperson by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt. On request, the Student Loan Ombudsperson may grant a student loan servicer additional time to make the records available.

§ 2507J. Student loan servicer reporting requirements.

By December 31 of each year, a student loan servicer shall report to the Student Loan Ombudsperson non-identifying consumer data from the current calendar year, including all of the following:

(1) The number and total dollar amount of student education loans the student loan servicer is servicing in this State.

(2) The number, percentage, and total dollar amount of all student education loans that the student loan servicer is servicing that are in default.

(3) The number, percentage, and total dollar amount of all student education loans that the student loan servicer is servicing that are more than 60 days delinquent.

(4) The number, percentage, and total dollar amount of all student education loans that the student loan servicer is servicing that have been paid off.

(5) The number, percentage, and total dollar amount of all student education loans the student loan servicer is servicing that have been forgiven or discharged.

(6) Any additional information requested by the Student Loan Ombudsperson.

§ 2508J. Student loan servicer compliance with federal law.

A student loan servicer shall comply with all applicable federal laws and regulations related to student loan servicing, including the Truth in Lending Act, 15 U.S.C. § 1601 et seq. and the regulations adopted under that Act. In addition to any other remedies provided by law, a violation of the federal law or regulation is a violation of this chapter.

§ 2509J. Student Loan Ombudsperson powers and duties; reports.

(a) There is established within the Department of Justice an Office of the Student Loan Ombudsperson. The Attorney General shall appoint the Student Loan Ombudsperson.

(b) The Student Loan Ombudsperson shall do all of the following:

(1) Receive, investigate, and attempt to resolve complaints from student loan borrowers.

(2) Connect student loan borrowers with complaints to free legal services, where appropriate.

(3) Refer appropriate student loan borrower complaints alleging violations of this chapter to the Consumer Protection Unit or other appropriate agencies for investigation.

(4) Compile and analyze data regarding student loan borrower complaints received under paragraph (b)(1) of this section.

(5) Assist student loan borrowers in understanding their rights and responsibilities under the terms of student education loans.

(6) Provide information to the public, state agencies, state legislators, and others regarding the problems and concerns of student loan borrowers and make recommendations for resolving those problems and concerns.

(7) Analyze and monitor the development and implementation of federal, state, and local laws, regulations, and policies relating to student loan borrowers and make recommendations for any changes deemed necessary.

(8) Review the complete student education loan history for any student loan borrower who has provided written consent for the review.

(9) Disseminate information concerning the availability of the Student Loan Ombudsperson to assist student loan borrowers and potential student loan borrowers, public institutions of higher education, student loan servicers, and other participants in student education loan lending with student loan servicing concerns.

(10) Meet at least once per quarter with a member of the Consumer Protection Unit to coordinate efforts under this section.

(11) Take any other actions deemed necessary to fulfill the student loan borrower assistance, education, and complaints-related duties in this chapter.

(c) The Student Loan Ombudsperson may access, receive, and use any documents, information, or evidence the Student Loan Ombudsperson deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of the documents, information, or evidence, including any documents, information, or evidence in the possession of the State Bank Commissioner.

(d)(1) The Student Loan Ombudsperson shall submit an annual report to all of the following not later than March 1 of each year:

a. The President Pro Tempore of the Senate.

b. The Speaker of the House of Representatives.

c. The members of the following committees of the General Assembly:

1. The Senate Banking, Business, Insurance & Technology Committee.

2. The Senate Education Committee.

3. The House Economic Development, Banking, Insurance & Commerce Committee.

4. The House Education Committee.

314 d. The Director and Librarian of the Division of Research of Legislative Council.

315 e. The Director of the Delaware Public Archives.

316 f. The Governor.

317 (2) The Student Loan Ombudsperson shall make the annual report available to interested parties and the
318 general public and publish the annual report on the Student Loan Ombudsperson's website.

319 (3) The annual report must include, at a minimum, all of the following:

320 a. Non-identifying consumer data from the preceding calendar year, including the information required
321 under § 2507J of this title, for each student loan servicer.

322 b. Information regarding the implementation of this chapter.

323 c. Information, in the aggregate, regarding the number and categories of student loan borrower complaints
324 filed with the Student Loan Ombudsperson and Consumer Protection Unit.

325 d. The number of student loan borrower complaints investigated and resolved by the Student Loan
326 Ombudsperson and the Consumer Protection Unit.

327 e. Any recommendations pertaining to the regulation of student loan servicers and the enforcement of this
328 chapter.

329 § 2510J. Regulatory authority.

330 The Attorney General may adopt regulations for the administration and enforcement of this chapter.

331 § 2511J. Enforcement.

332 (a) In addition to any remedies a consumer may have at law or in equity, a violation of this chapter is deemed an
333 unlawful practice under § 2513 of this title and a violation of subchapter II of Chapter 25 of this title.

334 (b) A court shall award attorney's fees for a violation of this chapter.

335 Section 2. This Act is severable. If any provision of this Act or the application of this Act to any person or
336 circumstance is held invalid, the invalidity does not affect the provisions or applications of this Act that can be given effect
337 without the invalid provision or application.

338 Section 3. This Act takes effect on January 1, 2024.

SYNOPSIS

Over the past decade, an increasing number of states have passed legislation establishing a Student Loan Borrower Bill of Rights. At least 18 states have passed such legislation. Of these 18 states, 12 states have a Student Loan Ombudsperson and 13 have a licensing program, with another two states having a registration program instead of a licensing program.

This Act enacts a Student Loan Borrower Bill of Rights for this State that does all of the following:

(1) Requires student loan servicers to engage in certain practices related to communications with student loan borrowers and cosigners of student education loans and handling of transactions by student loan borrowers and cosigners of student education loans.

(2) Prohibits student loan servicers from engaging in certain practices including unfair or deceptive practices or abusive practices.

(3) Requires student loan servicers to retain records related to student loan transactions for 7 years and to yearly report non-identifying information about student education loans serviced in this State, including default and delinquency rates, to the Student Loan Ombudsperson.

(4) Establishes the Office of the Student Loan Ombudsperson which shall, among other duties, receive, investigate, and attempt to resolve complaints from student loan borrowers.

Author: Senator S. McBride