

SB0086



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB0086

Introduced 1/20/2023, by Sen. Laura Fine

SYNOPSIS AS INTRODUCED:

110 ILCS 983/5
110 ILCS 983/15
110 ILCS 983/25 new
110 ILCS 983/30 new
110 ILCS 983/35 new
110 ILCS 983/40 new
110 ILCS 983/45 new
110 ILCS 983/50 new

Amends the Know Before You Owe Private Education Loan Act. Provides that the information regarding loans shall be provided to borrowers and cosigners (instead of just borrowers). Sets forth provisions for cosigner disclosure and notice, cosigner release, cosigner rights, what happens in the event of the bankruptcy or death of a cosigner, the total and permanent disability of a borrower or cosigner, and refinancing and modified or flexible repayment plans. Effective immediately.

LRB103 25185 RJT 51524 b

A BILL FOR

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Know Before You Owe Private Education Loan
5 Act is amended by changing Sections 5 and 15 and by adding
6 Sections 25, 30, 35, 40, 45, and 50 as follows:

7 (110 ILCS 983/5)

8 Sec. 5. Definitions. As used in this Act:

9 "Annual percentage rate" means the percentage rate
10 calculated according to the Federal Reserve Board's
11 methodology as set forth under Regulation Z, 12 CFR Part 1026.

12 "Cosigner" means any individual who is liable for the
13 obligation of another without compensation, regardless of how
14 the individual is designated in the contract or instrument
15 with respect to that obligation, including an obligation under
16 a private education loan extended to consolidate a borrower's
17 preexisting student loans. The term includes any individual
18 whose signature is requested, as a condition, to grant credit
19 or to forbear on collection. The term does not include a spouse
20 of an individual if the spouse's signature is needed solely to
21 perfect the security interest in a loan.

22 "Educational expense" means any expense, in whole or in
23 part, expressly used to finance postsecondary education,

1 regardless of whether the debt incurred by a student to pay
2 that expense is owed to the provider of postsecondary
3 education whose school, program, or facility the student
4 attends.

5 "Income share agreement" means an agreement under which a
6 borrower commits to pay a percentage of his or her future
7 income in exchange for money, payments, or credits applied to
8 or on behalf of a borrower. An income share agreement
9 constitutes a loan and debt within the meaning of this Act.

10 "Income share agreement provider" means:

11 (1) a person that provides money, payments, or credits
12 to or on behalf of a borrower pursuant to the terms of an
13 income share agreement; or

14 (2) any other person engaged in the business of
15 soliciting, making, funding, or extending income share
16 agreements.

17 "Institution of higher education" includes, but is not
18 limited to, institutions falling under the Private Business
19 and Vocational Schools Act of 2012, the Private College Act,
20 and public institutions of higher education as defined in
21 Section 1 of the Board of Higher Education Act. "Institution
22 of higher education" also includes a person engaged in the
23 business of providing postsecondary education, via
24 correspondence, online, or in this State, to a person located
25 in this State, regardless of whether the person has obtained
26 authorization from the Illinois Board of Higher Education to

1 operate in this State or is accredited.

2 "Private educational lender" and "private education loan"
3 have the meanings ascribed to the terms in Section 140 of the
4 Truth in Lending Act (15 U.S.C. 1650). In addition, "private
5 educational lender" includes an income share agreement
6 provider and a student financing company and "private
7 education loan" includes an income share agreement and student
8 financing.

9 "Student financing company" means a person engaged in the
10 business of securing, making, or extending student financing.
11 "Student financing company" does not include the following
12 persons, only to the extent that State regulation is preempted
13 by federal law:

14 (1) a federally chartered bank, savings bank, savings
15 and loan association, or credit union;

16 (2) a wholly owned subsidiary of a federally chartered
17 bank or credit union; and

18 (3) an operating subsidiary where each owner of the
19 operating subsidiary is wholly owned by the same federally
20 chartered bank or credit union.

21 "Student financing" means an extension of credit that:

22 (1) is not made, insured, or guaranteed under Title IV
23 of the Higher Education Act of 1965 (20 U.S.C. 1070 et
24 seq.);

25 (2) is extended to a consumer expressly, in whole or
26 in part, for postsecondary educational expenses,

1 regardless of whether the extension of credit is provided
2 by the institution of higher education that the student
3 attends;

4 (3) does not include a private education loan;

5 (4) does not include an income share agreement; and

6 (5) does not include a loan that is secured by real
7 property or a dwelling.

8 "Total and permanent disability" means a physical or
9 mental impairment, disease, or loss of a permanent nature that
10 prevents employment with or without reasonable accommodation,
11 with proof of disability being in the form of a declaration
12 from the United States Social Security Administration, the
13 Illinois Workers' Compensation Commission, the United States
14 Department of Defense, or an insurer authorized to transact
15 business in this State who is providing disability insurance
16 coverage to a contractor. The term does not include a
17 condition that has not progressed or been exacerbated or that
18 the individual did not acquire until after the closing of the
19 loan agreement. In addition, documentation sufficient to
20 establish a total and permanent disability for a federal
21 student loan made pursuant to Title IV of the federal Higher
22 Education Act of 1965 is sufficient to establish a total and
23 permanent disability under this Act.

24 (Source: P.A. 102-583, eff. 8-26-21.)

25 (110 ILCS 983/15)

1 Sec. 15. Provision of information.

2 (a) Provision of loan statement to borrowers and
3 cosigners.

4 (1) Loan statement. A private educational lender that
5 disburses any funds with respect to a private education
6 loan described in this Section shall send loan statements
7 to the borrowers and cosigners of those funds not less
8 than once every 3 months during the time that the borrower
9 is enrolled at an institution of higher education.

10 (2) Contents of statements for income share
11 agreements. Each statement described in subparagraph (1)
12 with respect to income share agreements, shall:

13 (A) report the consumer's total amounts financed
14 under each income share agreement;

15 (B) report the percentage of income payable under
16 each income share agreement;

17 (C) report the maximum number of monthly payments
18 required to be paid under each income share agreement;

19 (D) report the maximum amount payable under each
20 income share agreement;

21 (E) report the maximum duration of each income
22 share agreement;

23 (F) report the minimum annual income above which
24 payments are required under each income share
25 agreement; and

26 (G) report the annual percentage rate for each

1 income share agreement at the minimum annual income
2 above which payments are required and at \$10,000
3 income increments thereafter up to the annual income
4 where the maximum number of monthly payments results
5 in the maximum amount payable.

6 (3) Contents of all other loan statements. Each
7 statement described in subparagraph (1) that does not fall
8 under subparagraph (2) shall:

9 (A) report the borrower's total remaining debt to
10 the private educational lender, including accrued but
11 unpaid interest and capitalized interest;

12 (B) report any debt increases since the last
13 statement; and

14 (C) list the current annual percentage rate for
15 each loan.

16 (b) Certification of exhaustion of federal student loan
17 funds to private educational lender. Upon the request of a
18 private educational lender, acting in connection with an
19 application initiated by a borrower for a private education
20 loan in accordance with Section 5, the institution of higher
21 education shall within 15 days of receipt of the request
22 provide certification to such private educational lender:

23 (1) that the borrower who initiated the application
24 for the private education loan, or on whose behalf the
25 application was initiated, is enrolled or is scheduled to
26 enroll at the institution of higher education;

1 (2) of the borrower's cost of attendance at the
2 institution of higher education as determined under
3 paragraph (2) of subsection (a) of this Section;

4 (3) of the difference between:

5 (A) the cost of attendance at the institution of
6 higher education; and

7 (B) the borrower's estimated financial assistance
8 received under the federal Higher Education Act of
9 1965 and other assistance known to the institution of
10 higher education, as applicable;

11 (4) that the institution of higher education has
12 received the request for certification and will need
13 additional time to comply with the certification request;
14 and

15 (5) if applicable, that the institution of higher
16 education is refusing to certify the private education
17 loan.

18 (c) Certification of exhaustion of federal student loan
19 funds to borrower. With respect to a certification request
20 described under subsection (b), and prior to providing such
21 certification in paragraph (1) of subsection (b) or providing
22 notice of the refusal to provide certification under paragraph
23 (5) of subsection (b), the institution of higher education
24 shall:

25 (1) determine whether the borrower who initiated the
26 application for the private education loan, or on whose

1 behalf the application was initiated, has applied for and
2 exhausted the federal financial assistance available to
3 such borrower under the federal Higher Education Act of
4 1965 and inform the borrower and any cosigners
5 accordingly;

6 (2) provide the borrower and any cosigners whose loan
7 application has prompted the certification request by a
8 private educational lender, as described in paragraph (1)
9 of subsection (b), with the following information and
10 disclosures:

11 (A) the amount of additional federal student
12 assistance for which the borrower is eligible and the
13 advantages of federal loans under the federal Higher
14 Education Act of 1965, including disclosure of income
15 driven repayment options, fixed interest rates,
16 deferments, flexible repayment options, loan
17 forgiveness programs, additional protections, and the
18 higher student loan limits for dependent borrowers
19 whose parents are not eligible for a Federal Direct
20 PLUS Loan;

21 (B) the borrower's ability to select a private
22 educational lender of the borrower's choice;

23 (C) the impact of a proposed private education
24 loan on the borrower's potential eligibility for other
25 financial assistance, including federal financial
26 assistance under the federal Higher Education Act; and

1 (D) the borrower's right to accept or reject a
2 private education loan within the 30-day period
3 following a private educational lender's approval of a
4 borrower's application and the borrower's 3-day right
5 to cancel period; and

6 (3) Any institution of higher education that is also
7 acting as a private educational lender shall provide the
8 certification of exhaustion of federal student loan funds
9 described in paragraphs (1) and (2) of this subsection (c)
10 to the borrower and any cosigners prior to disbursing
11 funds to the borrower. Any institution of higher education
12 that is not eligible for funding under Title IV of the
13 federal Higher Education Act of 1965 is not required to
14 provide this certification to the borrower or any
15 cosigners.

16 (Source: P.A. 102-583, eff. 8-26-21; 102-813, eff. 5-13-22.)

17 (110 ILCS 983/25 new)

18 Sec. 25. Cosigner disclosure; notice.

19 (a) Before extending a private education loan that
20 requires a cosigner, a private educational lender shall
21 disclose to the cosigner:

22 (1) how the private education loan obligation will
23 appear on the cosigner's credit report;

24 (2) how the cosigner will be notified if the private
25 education loan becomes delinquent, including how the

1 cosigner can cure the delinquency in order to avoid
2 negative credit furnishing and the loss of cosigner
3 release eligibility; and

4 (3) eligibility for release of the cosigner's
5 obligation on the private education loan, including the
6 number of on-time payments and any other criteria required
7 to approve the release of the cosigner from the loan
8 obligation.

9 (b) For any private education loan that obligates a
10 cosigner, a private educational lender shall provide the
11 borrower and the cosigner an annual written notice containing
12 information about cosigner release, including the
13 administrative and objective criteria the lender requires to
14 approve the release of the cosigner from the loan obligation
15 and the process for applying for cosigner release. If the
16 borrower has met the applicable payment requirement to be
17 eligible for cosigner release, the lender shall send the
18 borrower and the cosigner a written notification by mail, and
19 by electronic mail if the borrower or cosigner has elected to
20 receive electronic communications from the lender, informing
21 the borrower and cosigner that the payments requirement to be
22 eligible for cosigner release has been met. The notification
23 must also include information about any additional criteria to
24 qualify for cosigner release and the procedure to apply for
25 cosigner release.

26 (c) A private educational lender shall provide written

1 notice to a borrower who applies for cosigner release but
2 whose application is incomplete. The written notice must
3 include a description of the information needed to consider
4 the application complete and the date by which the applicant
5 must furnish the missing information in order to complete the
6 application.

7 (d) Within 30 days after a borrower submits a completed
8 application for cosigner release, the private educational
9 lender shall send the borrower and cosigner a written notice
10 that informs the borrower and cosigner whether the lender has
11 approved or denied the cosigner release application. If the
12 lender denies a request for cosigner release, the borrower may
13 request copies of any documents or information used in the
14 determination, including the credit score threshold used by
15 the lender, the borrower's credit report, the borrower's
16 credit score, and any other documents or information specific
17 to the borrower. The lender shall also provide any adverse
18 action notices required under applicable federal law if the
19 denial is based in whole or in part on any information
20 contained in a credit report.

21 (e) In response to a written or oral request by the
22 borrower for cosigner release, a private educational lender
23 shall provide to the borrower the information described in
24 subsection (b) of this Section.

1 Sec. 30. Cosigner release.

2 (a) A private educational lender may not impose any
3 restriction that permanently bars a borrower from qualifying
4 for cosigner release, including restricting the number of
5 times a borrower may apply for cosigner release.

6 (b) A private educational lender may not impose any
7 negative consequences on a borrower or cosigner during the 60
8 days following the issuance of the notice required pursuant to
9 subsection (c) of Section 25 or until the lender makes a final
10 determination about a borrower's cosigner release application,
11 whichever occurs later. As used in this subsection, "negative
12 consequences" includes the imposition of additional
13 eligibility criteria, negative credit reporting, lost
14 eligibility for cosigner release, late fees, interest
15 capitalization, or other financial injury.

16 (c) For any private education loan issued on or after the
17 effective date of this amendatory Act of the 103rd General
18 Assembly, a private educational lender may not require proof
19 of more than 12 consecutive, on-time payments as part of the
20 criteria for cosigner release. A borrower who has paid the
21 equivalent of 12 months of principal and interest payments
22 within any 12-month period is deemed to have satisfied the
23 consecutive, on-time payment requirement even if the borrower
24 has not made payments monthly during the 12-month period. If a
25 borrower or cosigner requests a change in terms that restarts
26 the count of consecutive, on-time payments required for

1 cosigner release, the lender shall notify the borrower and
2 cosigner in writing of the impact of the change and provide the
3 borrower and cosigner with the right to withdraw or reverse
4 the request to avoid that impact.

5 (d) A borrower may request an appeal of a private
6 educational lender's determination to deny a request for
7 cosigner release, and the lender shall permit the borrower to
8 submit additional documentation evidencing the borrower's
9 ability, willingness, and stability to meet the payment
10 obligations. The borrower may request that another employee of
11 the lender review the cosigner release determination.

12 (e) A private educational lender shall establish and
13 maintain a comprehensive record management system reasonably
14 designed to ensure the accuracy, integrity, and completeness
15 of information about cosigner release applications and to
16 ensure compliance with applicable State and federal laws. The
17 system must include the number of cosigner-release
18 applications received, the approval and denial rate, and the
19 primary reasons for any denial.

20 (110 ILCS 983/35 new)

21 Sec. 35. Cosigner rights.

22 (a) A private educational lender shall provide a cosigner
23 with access to all documents or records related to the
24 cosigned private education loan that are available to the
25 borrower.

1 (b) If a private educational lender provides electronic
2 access to documents and records for a borrower, it shall
3 provide equivalent electronic access to the cosigner.

4 (c) Upon the borrower's request, the private educational
5 lender shall redact the borrower's contact information from
6 documents and records provided to a cosigner.

7 (d) A private educational lender may not include in a
8 private education loan executed on or after the effective date
9 of this amendatory Act of the 103rd General Assembly a
10 provision that permits the lender to accelerate payments, in
11 whole or in part, except upon a payment default. A private
12 educational lender may not place any loan or account into
13 default or accelerate a loan for any reason other than payment
14 default.

15 (e) A private education loan executed before the effective
16 date of this amendatory Act of the 103rd General Assembly may
17 permit the private educational lender to accelerate payments
18 only if the promissory note or loan agreement explicitly
19 authorizes an acceleration and only for the reasons stated in
20 the note or agreement.

21 (110 ILCS 983/40 new)

22 Sec. 40. Bankruptcy or death of cosigner.

23 (a) If a cosigner dies, the private educational lender may
24 not attempt to collect against the cosigner's estate other
25 than for payment default.

1 (b) With regard to the death or bankruptcy of a cosigner,
2 if a private education loan is not more than 60 days delinquent
3 at the time the private educational lender is notified of the
4 cosigner's death or bankruptcy, the lender may not change any
5 terms or benefits under the promissory note, the repayment
6 schedule, the repayment terms, or the monthly payment amount
7 or any other provision associated with the loan.

8 (110 ILCS 983/45 new)

9 Sec. 45. Total and permanent disability of a borrower or
10 cosigner.

11 (a) For any private education loan issued on or after the
12 effective date of this amendatory Act of the 103rd General
13 Assembly, a private educational lender, when notified of the
14 total and permanent disability of a borrower or cosigner,
15 shall release the cosigner from the obligations of a cosigner
16 under the private education loan. The lender may not attempt
17 to collect a payment from a cosigner following a notification
18 of total and permanent disability of the borrower or cosigner.

19 (b) A private educational lender shall be notified of the
20 total and permanent disability of a borrower and discharge the
21 liability of the borrower and cosigner on the loan.

22 (c) After receiving a notification described in subsection
23 (b) of this Section, the private educational lender may not:

24 (1) attempt to collect on the outstanding liability of
25 the borrower or cosigner; or

1 (2) monitor the disability status of the borrower at
2 any point after the date of discharge.

3 (d) A private educational lender shall, within 30 days
4 after the release of either a cosigner or borrower from the
5 obligation of a private education loan pursuant to subsection
6 (a) or (b) of this Section, notify both the borrower and
7 cosigner of the release.

8 (e) A private educational lender shall, within 30 days
9 after receiving notice of the total and permanent disability
10 of a borrower pursuant to subsection (a) of this Section,
11 provide the borrower with an option to designate an individual
12 to have the legal authority to act on behalf of the borrower.

13 (f) If a cosigner is released from the obligations of a
14 private education loan pursuant to subsection (a) of this
15 Section, the private educational lender may not require the
16 borrower to obtain another cosigner on the loan obligation.

17 (g) A private educational lender may not declare a default
18 or accelerate the debt against a borrower on the sole basis of
19 the release of the cosigner from the loan obligation due to
20 total and permanent disability pursuant to subsection (a) of
21 this Section.

22 (110 ILCS 983/50 new)

23 Sec. 50. Refinancing; modified or flexible repayment plan
24 or loan modification.

25 (a) Before offering a person a private education loan that

1 is being used to refinance an existing education loan, a
2 private educational lender shall provide the person with a
3 disclosure explaining that the benefits and protections
4 applicable to the existing loan may be lost due to the
5 refinancing. The disclosure must be provided on a one-page
6 information sheet in at least 12-point type and must be
7 written in simple, clear, understandable, and easily readable
8 language.

9 (b) A private educational lender shall:

10 (1) provide on its website a description of any
11 modified or flexible repayment options offered by the
12 lender for private education loans;

13 (2) establish policies and procedures and implement
14 modified or flexible repayment options consistently in
15 order to facilitate the evaluation of such option
16 requests, including providing accurate information
17 regarding any options that may be available to the
18 borrower through the promissory note or that may have been
19 marketed to the borrower through marketing materials; and

20 (3) consistently present and offer private education
21 loan modified or flexible repayment options to borrowers
22 with similar financial circumstances if the lender offers
23 such repayment options.

24 (c) A private educational lender may not place a loan or
25 account into default or accelerate a loan while a borrower is
26 seeking a loan modification or enrollment in a modified or

1 flexible repayment plan, except that a private educational
2 lender may place a loan or account into default or accelerate a
3 loan for payment default 90 days or more after the borrower's
4 default.

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.