

111TH CONGRESS  
2D SESSION

# H. R. 5458

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2010

Received; read twice and referred to the Committee on Health, Education,  
Labor, and Pensions

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## AN ACT

To amend the Truth in Lending Act and the Higher Education Act of 1965 to require additional disclosures and protections for students and cosigners with respect to student loans, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; FINDINGS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Christopher Bryski Student Loan Protection Act” and  
4 “Christopher’s Law”.

5 (b) FINDINGS.—The Congress finds the following:

6 (1) There is no requirement for Federal or pri-  
7 vate educational lenders to provide information with  
8 respect to creating a durable power of attorney for  
9 financial decisionmaking in accordance with State  
10 law to be used in the event of the death, incapacita-  
11 tion, or disability of the borrower or such cosigner  
12 (if any).

13 (2) No requirement exists for private edu-  
14 cational lenders’ master promissory notes to include  
15 a clear and conspicuous description of the respon-  
16 sibilities of a borrower and cosigner in the event the  
17 borrower or cosigner becomes disabled, incapaci-  
18 tated, or dies.

19 (3) Of the 1,400,000 people who sustain a trau-  
20 matic brain injury each year in the United States,  
21 50,000 die; 235,000 are hospitalized; and 1,100,000  
22 are treated and released from an emergency depart-  
23 ment.

24 (4) It is estimated that the annual incidence of  
25 spinal cord injury, not including those who die at the  
26 scene of an accident, is approximately 40 cases per

1       1,000,000 people in the United States or approxi-  
2       mately 12,000 new cases each year. Since there have  
3       not been any overall incidence studies of spinal cord  
4       injuries in the United States since the 1970s, it is  
5       not known if incidence has changed in recent years.

6           (5) In the 2007–2008 academic year, 13 per-  
7       cent of students attending a 4-year public school,  
8       and 26.2 percent of students attending a 4-year pri-  
9       vate school, borrowed monies from private edu-  
10      cational lenders.

11          (6) According to Sallie Mae, in 2009, the num-  
12      ber of cosigned private education loans increased  
13      from 66 percent to 84 percent of all private edu-  
14      cation loans.

15   **SEC. 2. ADDITIONAL STUDENT LOAN PROTECTIONS.**

16          (a) IN GENERAL.—Section 140 of the Truth in Lend-  
17      ing Act (15 U.S.C. 1650) is amended by adding at the  
18      end the following new subsection:

19          “(f) ADDITIONAL PROTECTIONS RELATING TO  
20      DEATH OR DISABILITY OF BORROWER OR COSIGNER OF  
21      A PRIVATE EDUCATION LOAN.—

22              “(1) OBLIGATION TO DISCUSS DURABLE POWER  
23      OF ATTORNEYS.—In conjunction with—

24                  “(A) any student loan counseling, if any,  
25                  provided by a covered educational institution to

1 any new borrower and cosigner (if any) at the  
2 time of any loan application, loan origination,  
3 or loan consolidation, or at the time the co-  
4 signer assumes responsibility for repayment, the  
5 institution shall provide information with re-  
6 spect to creating a durable power of attorney  
7 for financial decisionmaking, in accordance with  
8 State law; and

9 “(B) any application for a private edu-  
10 cation loan, the private educational lender in-  
11 volved in such loan shall provide information to  
12 the borrower, and cosigner (if any), concerning  
13 the creation of a durable power of attorney for  
14 financial decisionmaking, in accordance with  
15 State law, with respect to such loan.

16 “(2) CLEAR AND CONSPICUOUS DESCRIPTION  
17 OF COSIGNER’S OBLIGATION.—In the case of any  
18 private educational lender who extends a private  
19 education loan for which any cosigner is jointly lia-  
20 ble, the lender shall clearly and conspicuously de-  
21 scribe, in writing, the cosigner’s obligations with re-  
22 spect to the loan, including the effect the death, dis-  
23 ability, or inability to engage in any substantial  
24 gainful activity of the borrower or cosigner (if any)  
25 would have on any such obligation, in language that

1 the Board determines would give a reasonable per-  
2 son a reasonable understanding of the obligation  
3 being assumed by becoming a cosigner for the loan.

4 “(3) MODEL FORMS.—The Board shall publish  
5 model forms under section 105 for—

6 “(A) the information required under para-  
7 graph (1) with respect to a durable power of at-  
8 torney for financial decisionmaking, for each  
9 State (and such model forms under this sub-  
10 paragraph shall be uniform for all States to the  
11 greatest extent possible); and

12 “(B) describing a cosigner’s obligation for  
13 purposes of paragraph (2).

14 “(4) DEFINITION OF DEATH, DISABILITY, OR  
15 INABILITY TO ENGAGE IN ANY SUBSTANTIAL GAIN-  
16 FUL ACTIVITY.—For the purposes of this subsection  
17 with respect to a borrower or cosigner, the term  
18 ‘death, disability, or inability to engage in any sub-  
19 stantial gainful activity’—

20 “(A) means any condition described in sec-  
21 tion 437(a) of the Higher Education Act of  
22 1965 (20 U.S.C. 1087(a)); and

23 “(B) shall be interpreted by the Board in  
24 such a manner as to conform with the regula-  
25 tions prescribed by such Secretary of Education

1 under section 437(a) of the Higher Education  
2 Act of 1965 (20 U.S.C. 1087(a)) to the fullest  
3 extent practicable, including safeguards to pre-  
4 vent fraud and abuse.”.

5 (b) DEFINITIONS.—Subsection (a) of section 140 of  
6 the Truth in Lending Act (15 U.S.C. 1650(a)) is amended  
7 by adding at the end the following new paragraphs:

8 “(9) DURABLE POWER OF ATTORNEY.—The  
9 term ‘durable power of attorney’—

10 “(A) means a written instruction recog-  
11 nized under State law (whether statutory or as  
12 recognized by the courts of the State), relating  
13 to financial decisionmaking in cases when the  
14 individual lacks the capacity to make such deci-  
15 sions; or

16 “(B) has the meaning given to such term  
17 in the Uniform Durable Power of Attorney Act  
18 of 2006 and sections 5-501 through 5-505 of  
19 the Uniform Probate Code, as in effect in any  
20 State.

21 “(10) COSIGNER.—The term ‘cosigner’—

22 “(A) means any individual who is liable for  
23 the obligation of another without compensation,  
24 regardless of how designated in the contract or  
25 instrument;

1           “(B) includes any person whose signature  
2           is requested as condition to grant credit or to  
3           forebear on collection; and

4           “(C) does not include a spouse of an indi-  
5           vidual referred to in subparagraph (A) whose  
6           signature is needed to perfect the security inter-  
7           est in the loan.”.

8   **SEC. 3. FEDERAL STUDENT LOANS.**

9           Section 485(l)(2) of the Higher Education Act of  
10   1965 (20 U.S.C. 1092(l)(2)) is amended by adding at the  
11   end the following:

12           “(L) Information on the conditions re-  
13           quired to discharge the loan due to the death,  
14           disability, or inability to engage in any substan-  
15           tial gainful activity of the borrower in accord-  
16           ance with section 437(a), and an explanation  
17           that, in the case of a private education loan  
18           made through a private educational lender, the  
19           borrower, the borrower’s estate, and any  
20           consigner of a such a private education loan  
21           may be obligated to repay the full amount of  
22           the loan, regardless of the death or disability of  
23           the borrower or any other condition described in  
24           section 437(a).

1           “(M) The model form for the State in  
2           which the institution is located with respect to  
3           durable power of attorneys published by the  
4           Board of Governors of the Federal Reserve Sys-  
5           tem in accordance with subsection (f)(3)(A) of  
6           section 140 of the Truth in Lending Act (15  
7           U.S.C. 1650) and, in the case of a borrower  
8           who is not a resident of the State in which the  
9           institution is located, information on how to ac-  
10          cess such model form for the State in which the  
11          borrower is a resident.”.

Passed the House of Representatives September 28,  
2010.

Attest:                      LORRAINE C. MILLER,  
  *Clerk.*