

111TH CONGRESS  
2D SESSION

# S. 3996

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.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 1, 2010

Mr. LAUTENBERG introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

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,*

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

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

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

1           (1) There is no requirement for Federal or pri-  
2       vate educational lenders to provide information with  
3       respect to creating a durable power of attorney for  
4       financial decisionmaking in accordance with State  
5       law to be used in the event of the death, incapacita-  
6       tion, or disability of the borrower or any cosigner.

7           (2) No requirement exists for private edu-  
8       cational lenders' master promissory notes to include  
9       a clear and conspicuous description of the respon-  
10      sibilities of a borrower and cosigner in the event the  
11      borrower or cosigner becomes disabled, incapaci-  
12      tated, or dies.

13          (3) An estimated 1,700,000 people sustain a  
14      traumatic brain injury each year, with older adoles-  
15      cents aged 15 to 19 years old more likely to sustain  
16      a traumatic brain injury than other age groups.

17          (4) It has been estimated that the annual inci-  
18      dence of spinal cord injury, not including those who  
19      die at the scene of an accident, is approximately 40  
20      cases per 1,000,000 people in the United States or  
21      approximately 12,000 new cases each year. These in-  
22      juries can lead to permanent disability or loss of  
23      movement and can prohibit the victim from engaging  
24      in any substantial gainful activity.

1           (5) In the 2007–2008 academic year, 13 per-  
 2           cent of students attending a 4-year public institution  
 3           of higher education, and 26.2 percent of students at-  
 4           tending a 4-year private institution of higher edu-  
 5           cation, borrowed monies from private educational  
 6           lenders.

7           (6) According to Sallie Mae, in 2009, the per-  
 8           centage of cosigned private education loans in-  
 9           creased from 66 percent to 84 percent of all private  
 10          education loans.

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

12          (a) IN GENERAL.—

13           (1) AMENDMENT.—Section 140 of the Truth in  
 14          Lending Act (15 U.S.C. 1650) is amended by add-  
 15          ing at the end the following:

16          “(g) ADDITIONAL PROTECTIONS RELATING TO  
 17          DEATH OR DISABILITY OF BORROWER OR COSIGNER OF  
 18          A PRIVATE EDUCATION LOAN.—

19           “(1) OBLIGATION TO PROVIDE INFORMATION  
 20          ABOUT POWER OF ATTORNEY.—In conjunction  
 21          with—

22           “(A) any student loan counseling provided  
 23          by a covered educational institution to any new  
 24          borrower and any cosigner at the time of any  
 25          loan application, loan origination, or loan con-

1           solidation, or at the time the cosigner assumes  
2           responsibility for repayment, the institution  
3           shall provide information with respect to cre-  
4           ating a durable power of attorney for financial  
5           decisionmaking, in accordance with the State  
6           law where the institution is located; and

7           “(B) any application for a private edu-  
8           cation loan, the private educational lender in-  
9           volved in such loan shall provide information to  
10          the borrower, and any cosigner, concerning the  
11          creation of a durable power of attorney for fi-  
12          nancial decisionmaking, in accordance with the  
13          State law where the institution to be attended  
14          by the borrower is located, with respect to such  
15          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 any cosigner  
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 the Secretary of Education

1 under section 437(a) of such Act (20 U.S.C.  
 2 1087(a)) to the fullest extent practicable, in-  
 3 cluding safeguards to prevent fraud and  
 4 abuse.”.

5 (2) CONFORMING AMENDMENT.—Effective on  
 6 the designated transfer date established under sec-  
 7 tion 1062 of the Dodd-Frank Wall Street Reform  
 8 and Consumer Protection Act (12 U.S.C. 5582), sec-  
 9 tion 140(g) of the Truth in Lending Act (15 U.S.C.  
 10 1650(g)), as added by this subsection, is amended  
 11 by striking “Board” each place the term occurs and  
 12 inserting “Bureau”.

13 (b) DEFINITIONS.—Subsection (a) of section 140 of  
 14 the Truth in Lending Act (15 U.S.C. 1650(a)) is amend-  
 15 ed—

16 (1) by redesignating paragraphs (1) and (2)  
 17 through (8) as paragraphs (2) and (4) through (10),  
 18 respectively;

19 (2) by inserting before paragraph (2) the fol-  
 20 lowing:

21 “(1) 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 forbear 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;”; and

8 (3) by inserting after paragraph (2) (as redesign-  
 9 nated by paragraph (1)) the following:

10 “(3)(A) the term ‘durable power of attorney’  
 11 has the meaning given to such term under State law;  
 12 or

13 “(B) in the case of a State that does not have  
 14 a law described in subparagraph (A), the terms ‘du-  
 15 rable’ and ‘power of attorney’ have the meanings  
 16 given to such terms in section 102 of the Uniform  
 17 Power of Attorney Act, as approved by the National  
 18 Conference of Commissioners on State Laws in  
 19 2006;”.

20 **SEC. 3. FEDERAL STUDENT LOANS.**

21 Section 485(l)(2) of the Higher Education Act of  
 22 1965 (20 U.S.C. 1092(l)(2)) is amended by adding at the  
 23 end the following:

24 “(L) Information on the conditions re-  
 25 quired to discharge the loan due to the death,

1 disability, or inability to engage in any substan-  
2 tial gainful activity of the borrower in accord-  
3 ance with section 437(a), and an explanation  
4 that, in the case of a private education loan  
5 made through a private educational lender (as  
6 such terms are defined in section 140 of the  
7 Truth in Lending Act (20 U.S.C. 1019)), the  
8 borrower, the borrower's estate, and any co-  
9 signer of such a private education loan may be  
10 obligated to repay the full amount of the loan,  
11 regardless of the death or disability of the bor-  
12 rower or any other condition described in sec-  
13 tion 437(a).

14 “(M)(i) The model form with respect to  
15 durable power of attorney for financial decision-  
16 making, as published by the Board of Gov-  
17 ernors of the Federal Reserve System or the  
18 Bureau of Consumer Financial Protection (as  
19 the case may be) in accordance with section  
20 140(g)(3)(A) of the Truth in Lending Act (15  
21 U.S.C. 1650(g)(3)(A)), for the State in which  
22 the institution is located.

23 “(ii) In the case of a borrower who is not  
24 a resident of the State in which the institution  
25 is located, information on how to access such



- 1 model form for the State in which the borrower
- 2 resides.”.

