

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.

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

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.”.

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