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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 235

01/20/2015 Authored by Hilstrom, Norton, Nelson and Lien

The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act
1.2 relating to higher education; establishing certain requirements related to private
1.3 education loans; requiring certain disclosures; proposing coding for new law
1.4 as Minnesota Statutes, chapter 141B.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **[141B.01] DEFINITIONS.**

1.7 Subdivision 1. **Words; terms; phrases.** The following words, terms, and phrases
1.8 have the meanings given them for the purposes of sections 141B.01 to 141B.06.

1.9 Subd. 2. **Borrower.** "Borrower" means a natural person who: (1) was a Minnesota
1.10 resident at the time the person applied for a private education loan that was extended to
1.11 that person; (2) obtained a private education loan for purposes of attending a covered
1.12 educational institution in Minnesota; or (3) became a Minnesota resident after obtaining a
1.13 private education loan, but before the loan was paid off.

1.14 Subd. 3. **Charge off.** "Charge off" means to write a loan as a debt and terminate
1.15 servicing activity without a release of the borrower's liability.

1.16 Subd. 4. **Covered educational institution.** "Covered educational institution"
1.17 means a covered educational institution as defined in Code of Federal Regulations, title
1.18 12, section 1026.46(b)(1).

1.19 Subd. 5. **Loss mitigation option.** "Loss mitigation option" means a loan
1.20 modification, alternate repayment plan, forbearance, deferral, consolidation, refinance, or
1.21 other temporary or permanent relief intended to allow a borrower to become or remain
1.22 current on loan payments.

2.1 Subd. 6. **Person.** "Person" means a natural person, firm, partnership, limited
2.2 liability partnership, corporation, association, limited liability company, or other form of
2.3 business organization and the officers, directors, employees, or agents of that person.

2.4 Subd. 7. **Private education loan.** "Private education loan" or "loan" means a private
2.5 education loan as defined in Code of Federal Regulations, title 12, section 1026.46(b)(5),
2.6 but does not include a private education loan extended by a national bank.

2.7 Subd. 8. **Private education loan servicer.** "Private education loan servicer" or
2.8 "loan servicer" or "servicer" means a person responsible for the servicing of a private
2.9 education loan.

2.10 Subd. 9. **Servicing.** "Servicing" means receiving loan payments and performing
2.11 other administrative tasks after loan disbursement.

2.12 Sec. 2. **[141B.02] DISCLOSURE REQUIREMENTS.**

2.13 Subdivision 1. **In-school disclosures.** After disbursement of a private education
2.14 loan and while the borrower is enrolled in a covered educational institution, the servicer
2.15 shall provide to the borrower and any cosigner of the loan, at least every 90 days, loan
2.16 statements that clearly and conspicuously state:

2.17 (1) the initial and current loan amount, including a breakdown of principal and
2.18 interest, and any payments applied to the loan;

2.19 (2) the current annual percentage rate, and if applicable, the limitations on interest
2.20 rate adjustments in terms of frequency and amount;

2.21 (3) the date or event upon which the first loan payment will become due; and

2.22 (4) the name, address, and telephone number of the person whom the borrower may
2.23 contact with loan questions or concerns.

2.24 Subd. 2. **Disclosures before first loan payment is due.** At least 30 days and not
2.25 more than 90 days before a borrower's first loan payment is due, the servicer shall clearly
2.26 and conspicuously disclose to the borrower and any cosigner of the loan, in writing:

2.27 (1) the date on which the first loan payment is due;

2.28 (2) the name of the servicer, the address to which communications and payments
2.29 should be sent, and a telephone number and Web site where the borrower may obtain
2.30 additional information regarding the borrower's loan;

2.31 (3) the initial and current loan amount, including a breakdown of principal and
2.32 interest, and any payments applied to the loan;

2.33 (4) an estimate of the total amount to repay the loan, both at the annual percentage
2.34 rate in effect on the date the first loan payment is due and at the maximum possible rate of
2.35 interest allowable under the terms of the loan;

- 3.1 (5) whether the monthly payments are fixed or graduated;
 3.2 (6) the annual percentage rate in effect on the date the first loan payment is due,
 3.3 whether the rate is fixed or variable, and if applicable, the limitations on interest rate
 3.4 adjustments in terms of frequency and amount;
 3.5 (7) the maximum loan term;
 3.6 (8) an explanation of all consequences of late payments or default, including but not
 3.7 limited to finance charges, late fees, penalties, or other adjustments to the principal;
 3.8 (9) any contractual or promotional incentives available to the borrower;
 3.9 (10) an explanation of the terms and conditions of cosigner release from the loan;
 3.10 (11) a description of all alternative repayment plans offered by the loan holder; and
 3.11 (12) a description of servicemember or veteran benefits under the Servicemembers
 3.12 Civil Relief Act, United States Code, title 50, App. 501 et seq., or other federal or state law.

3.13 Subd. 3. **Disclosures at borrower's or cosigner's request.** A servicer shall make
 3.14 available in writing the information listed in subdivision 2; copies of the loan application,
 3.15 loan contract or promissory note and any amendments thereto; and the identity of the
 3.16 original lender, servicer and all subsequent transferees, within 14 days of receipt of request
 3.17 by a borrower or any cosigner of the loan. In the event that a servicer cannot reasonably
 3.18 respond to the request within 14 days, the servicer shall notify the borrower or cosigner in
 3.19 writing within 14 days of receipt of the request the reasons for the servicer's delay and
 3.20 the date on which the servicer intends to provide the requested information, but in no
 3.21 case shall the extension exceed 30 days.

3.22 **Sec. 3. [141B.03] LOSS MITIGATION.**

3.23 Subdivision 1. **Loss mitigation information at 45 days delinquency.** When a
 3.24 private education loan payment becomes 45 days past due, the servicer shall notify in
 3.25 writing the borrower and any cosigner of the loan, within 14 days of:

3.26 (1) the date on which the loan will be charged off or assigned to collections if no
 3.27 payment is made, and the consequences of such a charge off or assignment to collections,
 3.28 including but not limited to negative credit reporting and collection costs, including
 3.29 collection agency fees, attorney fees, and court fees;

3.30 (2) the minimum payment that must be made to avoid the loan being charged off
 3.31 or assigned to collections, and the minimum payment that must be made to bring the
 3.32 loan current; and

3.33 (3) all available loss mitigation options offered by the servicer that are applicable to
 3.34 the loan, as well as the terms, conditions, and fees or costs associated with each option.

4.1 Subd. 2. **Timely review of loss mitigation request.** When a servicer receives a loss
4.2 mitigation request from a borrower or any cosigner of a loan, the servicer shall:

4.3 (1) exercise reasonable diligence in obtaining documents and information necessary
4.4 to complete review of the loss mitigation request and give the borrower and any cosigner
4.5 of the loan at least 30 days to provide any requested documents or information;

4.6 (2) upon timely receipt of a loss mitigation application, evaluate the borrower and
4.7 any cosigner of the loan for all available loss mitigation options;

4.8 (3) within 30 days of receipt of a loss mitigation application, enroll the borrower
4.9 and any cosigner of the loan in the requested loss mitigation program if eligible or, if not,
4.10 provide a simple and understandable explanation of the denial and offer any other loss
4.11 mitigation option offered by the servicer that is applicable to the loan and allow at least 30
4.12 days for acceptance of an alternative loss mitigation option; and

4.13 (4) comply with any appeal period and procedures applicable to the specific loss
4.14 mitigation option.

4.15 Subd. 3. **Loss mitigation procedures.** When a borrower or any cosigner of a loan
4.16 notifies a servicer that the borrower or cosigner is having difficulty making loan payments,
4.17 the servicer shall provide the borrower or cosigner with the information referred to in
4.18 subdivision (1), clause (3).

4.19 Subd. 4. **Notice of delay.** In the event that the servicer cannot reasonably meet the
4.20 30-day period set forth in subdivision 2, clause (3), the servicer shall notify the borrower
4.21 and any cosigner of the loan as soon as possible, but not more than 30 days after receipt
4.22 of the loss mitigation application, of the reasons for the servicer's delay and the date on
4.23 which the servicer plans to complete review of the application, but in no case shall the
4.24 extension exceed 30 days.

4.25 Subd. 5. **Compliance required.** A servicer shall not refer a loan for collection
4.26 unless the servicer complies with this section.

4.27 Sec. 4. **[141B.04] APPLICATION OF LOAN PAYMENTS.**

4.28 Subdivision 1. **Application of loan payments.** When a borrower has multiple
4.29 loans serviced by one servicer, unless the borrower instructs the servicer to apply loan
4.30 payments in a different manner, the servicer shall, upon receipt of a payment from or on
4.31 behalf of the borrower:

4.32 (1) apply the payment first to the interest and fees owed on the payment due date,
4.33 and then to the principal balance of the loan bearing the highest annual percentage interest
4.34 rate; and

5.1 (2) apply any remaining portion of the payment to other loans' interest and fees, and
 5.2 then to the principal balance, of loans based on the loans' interest rates, from highest to
 5.3 lowest annual percentage rate, until the payment is exhausted.

5.4 Subd. 2. **Application of loan payments in excess of minimum amount due.** When
 5.5 a borrower has multiple loans serviced by one servicer, unless the borrower instructs the
 5.6 servicer to apply loan payments in a different manner, the servicer shall, upon receipt of a
 5.7 payment in excess of the minimum amount due from, or on behalf of, the borrower:

5.8 (1) apply the excess amount first to the interest and then to the principal balance of
 5.9 the loan bearing the highest annual percentage rate; and

5.10 (2) apply any remaining portion of the excess amount to the interest and then to the
 5.11 principal balance of the borrower's loans based on the loans' interest rates, from highest to
 5.12 lowest annual percentage rate, until the payment is exhausted.

5.13 Sec. 5. **[141B.05] SALE, TRANSFER, OR ASSIGNMENT OF A PRIVATE**
 5.14 **EDUCATION LOAN.**

5.15 Subdivision 1. **Disclosure.** If a sale, transfer, or assignment of a private education
 5.16 loan results in a change in the person to whom the borrower or any cosigner of the
 5.17 loan must send payments or communicate with concerning the loan, the transferor and
 5.18 transferee shall provide clear and conspicuous notice of the transfer to the borrower and
 5.19 any cosigner of the loan, no fewer than 30 days before the transfer.

5.20 Subd. 2. **Payment.** For a period of 60 days beginning on the date on which a
 5.21 transferor stops accepting payment, the transferor shall immediately forward any loan
 5.22 payment to the transferee, who shall accept the payment as on time and not impose any
 5.23 late fee or finance charge if the transferor received the payment on or before the applicable
 5.24 due date, including any grace period.

5.25 Subd. 3. **Other obligations of transferee.** For a period of 60 days beginning on
 5.26 the date on which the transferor stops accepting payment, the transferee shall (1) honor
 5.27 any loan promotion of benefit offered to the borrower or any cosigner of the loan by the
 5.28 transferor, and (2) provide a simple, online process to transfer existing electronic fund
 5.29 transfer authority and notify the borrower and any cosigner of the loan of the same.

5.30 Sec. 6. **[141B.06] VIOLATIONS.**

5.31 A violation of sections 141B.01 to 141B.05 shall be considered a violation for
 5.32 purposes of section 8.31.