STATE OF NEW YORK

2426--A

2019-2020 Regular Sessions

IN SENATE

January 24, 2019

Introduced by Sen. KAPLAN -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- reported favorably from said committee and committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the financial services law, in relation to student debt consultants

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The financial services law is amended by adding a new article 7 to read as follows:

ARTICLE 7
STUDENT DEBT CONSULTANTS

Section 701. Definitions.
702. Prohibitions.
703. Disclosure requirements.
704. Student debt consulting contracts.
705. Penalties and other provisions.
706. Rules and regulations.

§ 701. Definitions. (a) The term "advertisement" shall include, but is not limited to, all forms of marketing, solicitation, or dissemination of information related, directly or indirectly, to securing or obtaining a student debt consulting contract or services. Further, it shall include all commonly recognized forms of media marketing via television, radio, print media, all forms of electronic communication via the internet, and all prepared sales presentations given in person or over the internet to the general public.

(b) "Borrower" means any resident of this state who has received a student loan or agreed in writing to pay a student loan or any person

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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who shares a legal obligation with such resident for repaying a student loan.

(c) "FSA ID" means a username and password allocated to an individual by the federal government to enable the individual to log in to certain United States department of education websites, and may be used to sign certain documents electronically.

(d) "Student loan" means any loan to a borrower to finance post-secondary education or expenses related to post-secondary education.

(e) "Student debt consulting contract" or "contract" means an agreement between a borrower and a consultant under which the consultant agrees to provide student debt consulting services.

(f) "Student debt consultant" or "consultant" means an individual or a corporation, partnership, limited liability company or other business entity that, directly or indirectly, solicits or undertakes employment to provide student debt consulting services. A consultant does not include the following:

(1) a person or entity who holds or is owed an obligation on the student loan while the person or entity performs services in connection with the student loan;

(2) a bank, trust company, private banker, bank holding company, savings bank, savings and loan association, thrift holding company, credit union or insurance company organized under the laws of this state, another state or the United States, or a subsidiary or affiliate of such entity or a foreign banking corporation licensed by the superintendent of financial services or the comptroller of the currency;

(3) a bona fide not-for-profit organization that offers counseling or advice to borrowers;

(4) a public post-secondary educational institution or private nonprofit post-secondary educational institution; or

(5) such other persons as the superintendent prescribes by rule.

(g) "Student debt consulting services" means services that a student debt consultant provides to a borrower that the consultant represents will help to achieve any of the following:

(1) stop, enjoin, delay, void, set aside, annul, stay or postpone a default, bankruptcy, tax offset, or garnishment proceeding;

(2) obtain a forbearance, deferment, or other relief that temporarily halts repayment of a student loan;

(3) assist the borrower with preparing or filing documents related to student loan repayment;

(4) advise the borrower which student loan repayment plan or forgiveness program to consider;

(5) enroll the borrower in any student loan repayment, forgiveness, discharge, or consolidation program;

(6) assist the borrower in re-establishing eligibility for federal student financial assistance;

(7) assist the borrower in removing a student loan from default; or

(8) educate the borrower about student loan repayment.

§ 702. Prohibitions. A student debt consultant is prohibited from doing the following:

(a) performing student debt consulting services without a legal written, fully-executed contract with a borrower that comports with the provisions of this article;

(b) charging for or accepting any payment for student debt consulting services before the full completion of all such services, including a payment to be placed in escrow or any other account pending the completion of such services;

(c) taking a power of attorney from a borrower;

(d) retaining any original loan document or other original document related to a borrower's student loan;

(e) requesting that a borrower provide his or her FSA ID to the consultant, or accepting a borrower's FSA ID;

(f) stating or implying that a borrower will not be able to obtain relief on their own;

(g) misrepresenting, expressly or by implication, that:

(1) the consultant is a part of, affiliated with, or endorsed or sponsored by the government, government loan programs, the United States department of education, or borrowers' student loan servicers; or

(2) some or all of a borrower's payments to the consultant will be applied towards the borrower's student loans.

(h) inducing or attempting to induce a student debtor to enter a contract that does not fully comply with the provisions of this article; or

(i) engaging in any unfair, deceptive, or abusive act or practice.

§ 703. Disclosure requirements. (a) A student debt consultant shall clearly and conspicuously disclose in all advertisements:

(1) the actual services the consultant provides to borrowers;

(2) that borrowers may apply for consolidation loans from the United States department of education at no cost, including providing a direct link in all online advertising and contact information in all print advertising to the application materials for a Direct Consolidation Loan from the United States department of education;

(3) that consolidation or other services offered by the consultant may not be the best or only option for borrowers;

(4) that alternative federal student loan repayment plans, including income-based programs, that do not require consolidating existing federal student loans may be available; and

(5) that borrowers should consider consulting their student loan servicer before signing any legal document concerning a student loan.

(b) The disclosures required by subsection (a) of this section, if disseminated through print media or the internet, shall be clearly and legibly printed or displayed in not less than twelve-point bold type, or, if the advertisement is printed to be displayed in print that is smaller than twelve point, in bold type print that is no smaller than the print in which the text of the advertisement is printed or displayed.

(c) The provisions of this section shall apply to all consultants who disseminate advertisements in the state of New York or who intend to directly or indirectly contact a borrower who has a student loan and is in New York state. Consultants shall establish and at all times maintain control over the content, form and method of dissemination of all advertisements of their services. Further, all advertisements shall be sufficiently complete and clear to avoid the possibility to mislead or deceive.

§ 704. Student debt consulting contracts. (a) A student debt consulting contract shall:

(1) contain the entire agreement of the parties;

(2) be provided in writing to the borrower for review before signing;

(3) be printed in at least twelve-point type and written in the same language that is used by the borrower and was used in discussions between the consultant and the borrower to describe the borrower's services or to negotiate the contract;

(4) fully disclose the exact nature of the services to be provided by the consultant or anyone working in association with the consultant;

(5) fully disclose the total amount and terms of compensation for such services;

(6) contain the name, business address and telephone number of the consultant and the street address, if different, and facsimile number or email address of the consultant where communications from the debtor may be delivered;

(7) be dated and personally signed by the borrower and the consultant and be witnessed and acknowledged by a New York notary public; and

(8) contain the following notice, which shall be printed in at least fourteen-point boldface type, completed with the name of the Provider, and located in immediate proximity to the space reserved for the debtor's signature:

"NOTICE REQUIRED BY NEW YORK LAW

You may cancel this contract, without any penalty or obligation, at any time before midnight of

..... (fifth business day after execution).

..... (Name of consultant) (the "Consultant") or anyone working for the Consultant may not take any money from you or ask you for money until the consultant has completely finished doing everything this Contract says the Consultant will do.

You should consider contacting your student loan servicer before signing any legal document concerning your student loan. In addition, you may want to visit the New York State Department of Financial Services' student lending resource center at www.dfs.ny.gov/studentprotection. The law requires that this contract contain the entire agreement between you and the Provider. You should not rely upon any other written or oral agreement or promise."

The Provider shall accurately enter the date on which the right to cancel ends.

(b) (1) The borrower has the right to cancel, without any penalty or obligation, any contract with a consultant until midnight of the fifth business day following the day on which the consultant and the borrower sign a consulting contract. Cancellation occurs when the borrower, or a representative of the borrower, either delivers written notice of cancellation in person to the address specified in the consulting contract or sends a written communication by facsimile, by United States mail or by an established commercial letter delivery service. A dated proof of facsimile delivery or proof of mailing creates a presumption that the notice of cancellation has been delivered on the date the facsimile is sent or the notice is deposited in the mail or with the delivery service. Cancellation of the contract shall release the borrower from all obligations to pay fees or any other compensation to the consultant.

(2) The contract shall be accompanied by two copies of a form, captioned "notice of cancellation" in at least twelve-point bold type. This form shall be attached to the contract, shall be easily detachable, and shall contain the following statement written in the same language as used in the contract, and the contractor shall insert accurate information as to the date on which the right to cancel ends and the contractor's contact information:

"NOTICE OF CANCELLATION

Note: You may cancel this contract, without any penalty or obligation, at any time before midnight of (Enter date)

To cancel this contract, sign and date both copies of this cancellation notice and personally deliver one copy or send it by facsimile, United States mail, or an established commercial letter delivery service, indicating cancellation to the Consultant at one of the following:
Name of Consultant
Street Address
City, State, Zip
Facsimile:
I hereby cancel this transaction.
Name of Borrower:
Signature of Borrower:
Date: "

(3) Within ten days following receipt of a notice of cancellation given in accordance with this subsection, the consultant shall return any original contract and any other documents signed by or provided by the borrower. Cancellation shall release the borrower of all obligations to pay any fees or compensation to the consultant.

§ 705. Penalties and other provisions. (a) If the superintendent finds, after notice and hearing, that a consultant has intentionally violated any provision of this article, the superintendent may: (1) make null and void any agreement between the borrower and the consultant; and (2) impose a civil penalty of not more than ten thousand dollars for each violation.

(b) If the consultant violates any provision of this article and the borrower suffers damage because of the violation, the borrower may recover actual and consequential damages and costs from the consultant in an action based on this article. If the consultant recklessly violates any provision of this article, the court may award attorneys' fees and costs. If the consultant intentionally violates any provision of this article, the court may award treble damages, attorneys' fees and costs.

(c) Any provision of a student debt consulting contract that attempts or purports to limit the liability of the consultant under this article shall be null and void. Inclusion of such provision shall at the option of the borrower render the contract void. Any provision in a contract which attempts or purports to require arbitration of any dispute arising under this article shall be void at the option of the borrower. Any waiver of the provisions of this article shall be void and unenforceable as contrary to public policy.

(d) The provisions of this article are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law.

§ 706. Rules and regulations. In addition to such powers as may otherwise be prescribed by this chapter, the superintendent is hereby authorized and empowered to promulgate such rules and regulations as may in the judgment of the superintendent be consistent with the purposes of this article, or appropriate for the effective administration of this article.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.