

# STATE OF NEW YORK

5056

2023-2024 Regular Sessions

## IN SENATE

February 22, 2023

Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the financial services law, in relation to creating a private education debt registry

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

1 Section 1. The financial services law is amended by adding a new arti-  
2 cle 9 to read as follows:

### ARTICLE 9

#### PRIVATE EDUCATION DEBT REGISTRY

##### Section 901. Definitions.

6 902. Private education debt registry.

7 903. Rules and regulations.

8 904. Violations.

9 905. Severability.

##### § 901. Definitions. As used in this article:

11 1. "Fiscal year" means the twelve-month period that the private educa-  
12 tion creditor uses for financial reporting and budgeting.

13 2. "Higher education" means higher education, including career educa-  
14 tion, as those terms are defined in section two of the education law,  
15 via correspondence, online, or in person, regardless of whether the  
16 higher education institution is accredited within New York state.

17 3. "Higher education expense" means any expense arising from higher  
18 education.

19 4. "Private education creditor" means any person engaged in the busi-  
20 ness of securing, making, or extending a private education debt, or any  
21 holder of a private education debt, including providers of higher educa-  
22 tion to which a student education debt is owed. "Private education cred-  
23 itor" shall not include the following persons, only to the extent that  
24 state regulation is preempted by federal law:

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

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1 (a) any federally chartered bank, savings bank, savings and loan asso-  
2 ciation, or credit union;

3 (b) any bank, savings bank, savings and loan association, or credit  
4 union organized under the laws of this or any other state;

5 (c) any wholly owned subsidiary of a federally chartered bank or cred-  
6 it union; and

7 (d) any operating subsidiary where each owner of the operating subsid-  
8 iary is wholly owned by the same federally chartered bank or credit  
9 union.

10 5. "Private education debt" means an extension of credit or debt or  
11 obligation owed or incurred by a consumer, contractual or otherwise,  
12 contingent or absolute, that meets all of the following criteria:

13 (a) is not made, insured, or guaranteed under Title IV of the Higher  
14 Education Act of 1965 (20 U.S.C. s.1070 et seq.);

15 (b) is extended to a consumer expressly, in whole or in part, for, or  
16 accrues from nonpayment of, higher education expenses, regardless of  
17 whether the credit or debt or obligation is owed to the provider of  
18 higher education that the student attends; and

19 (c) shall not include any loan that is secured by real property or a  
20 dwelling.

21 "Private education debt" shall include extensions of credit or debt or  
22 obligations owed or incurred to refinance a private education debt.

23 6. "Provider of higher education" or "school" means a person engaged  
24 in the business of higher education. For the purposes of this defi-  
25 nition, a person need not have obtained authorization from the depart-  
26 ment of education to operate in this state and need not be an accredited  
27 institution.

28 § 902. Private education debt registry. 1. Beginning on or after the  
29 one hundred eightieth day after the effective date of this article, no  
30 person shall engage in business as a private education creditor in this  
31 state without first satisfying the following requirements set forth in  
32 subdivisions two and three of this section.

33 2. (a) A private education creditor operating in this state shall  
34 register with the superintendent pursuant to any registration procedures  
35 set forth by the superintendent by rule or regulation, which may include  
36 registration through the Nationwide Multistate Licensing System and  
37 Registry, and shall pay a fee set by the superintendent. The superinten-  
38 dent may prescribe an alternative registration process and fee structure  
39 for a provider of higher education. Registration shall include, at a  
40 minimum, the name and address of the private education creditor and any  
41 officer, director, partner, or owner of a controlling interest of the  
42 private education creditor. A private education creditor shall annually  
43 renew its registration and pay a renewal fee pursuant to a procedure and  
44 on or before a date to be determined by the superintendent.

45 (b) This subdivision shall not apply to regulated persons, as such  
46 term is defined in section one hundred four of this chapter, engaged in  
47 business as a private education creditor in this state, to the extent  
48 such regulation relates to its business as a private education creditor  
49 and such persons are required to furnish data or reports annually to the  
50 superintendent.

51 3. A private education creditor operating in this state shall annual-  
52 ly, on or before a date to be determined by the superintendent and not  
53 to exceed six months following the effective date of this article,  
54 provide the superintendent with the following documents and information  
55 about such creditor's private education debt portfolio related to  
56 consumers that reside in this state pursuant to any procedure set forth

1 by the superintendent, which may include reporting through the Nation-  
2 wide Multistate Licensing System and Registry, and which may further  
3 include different procedures for regulated persons, as that term is  
4 defined in section one hundred four of this chapter, and non-regulated  
5 persons:

6 (a) For private education creditors that secure, make, or extend  
7 private education debts, other than those private education debts  
8 reported pursuant to paragraph (c) of this subdivision, relating to such  
9 debts owed by a consumer residing in this state as of the end of the  
10 prior fiscal year:

11 (i) a list of all schools for which such private education debts were  
12 used to finance higher education, including, in the case of a refinanc-  
13 ing loan, the school that the consumer attended using the private educa-  
14 tion debt that was refinanced;

15 (ii) the total outstanding dollar amount and number of such private  
16 education debts and the number of consumers who owe such private educa-  
17 tion debts;

18 (iii) the total dollar amount and number of such private education  
19 debts associated with each school identified under subparagraph (i) of  
20 this paragraph;

21 (iv) the total dollar amount and number of private education debts  
22 secured, made, or extended in the prior fiscal year;

23 (v) the total dollar amount and number of private education debts  
24 secured, made, or extended in the prior fiscal year associated with each  
25 school identified under subparagraph (i) of this paragraph;

26 (vi) the range of starting interest rates for private education debts  
27 secured, made, or extended to consumers in the prior fiscal year and  
28 percentage of consumers who receive those rates;

29 (vii) the overall default rate, as well as the overall default for  
30 such debts associated with each school listed under subparagraph (i)  
31 of this paragraph;

32 (viii) the total dollar amount and number of private education debts  
33 that defaulted for reasons other than non-payment in the prior fiscal  
34 year, as applicable;

35 (ix) the total dollar amount and number of private education debts  
36 with a cosigner, as applicable;

37 (x) the total dollar amount and number of private education debts  
38 secured, made, or extended with a cosigner in the prior fiscal year, as  
39 applicable;

40 (xi) the total dollar amount and number of private education debts  
41 secured, made, or extended to refinance other private education debts or  
42 federal student loans, respectively, as applicable;

43 (xii) the total dollar amount and number of private education debts  
44 secured, made, or extended to refinance other private education debts or  
45 federal student loans, respectively, in the prior fiscal year, as appli-  
46 cable;

47 (xiii) the total dollar amount and number of private education debts  
48 for which the private education creditor has sued to collect in the  
49 prior fiscal year, as applicable;

50 (xiv) additional information as may in the judgment of the superinten-  
51 dent be necessary and appropriate in order to assess the total size and  
52 status of the private education debt market and to assess borrower well-  
53 being; and

54 (xv) A copy of any model promissory note, agreement, contract or other  
55 instrument used by a private education creditor during the previous  
56 fiscal year to substantiate that a new private education debt has been

1 extended to the consumer or that a consumer owes a debt or obligation to  
2 the private education creditor.

3 (b) For private education creditors that acquire or assume private  
4 education debts owed by a consumer residing in this state, relating to  
5 such debts as of the end of the prior fiscal year:

6 (i) a list of all schools for which such private education debts were  
7 used to finance higher education, including, in the case of a refinanc-  
8 ing loan, the school that the consumer attended using the private educa-  
9 tion debt that was refinanced;

10 (ii) the total outstanding dollar amount and number of such private  
11 education debts and number of consumers who owe such private education  
12 debts;

13 (iii) the total dollar amount and number of private education debts  
14 associated with each school identified under subparagraph (i) of this  
15 paragraph;

16 (iv) the total dollar amount and number of private education debts  
17 acquired or assumed in the prior fiscal year;

18 (v) the total dollar amount and number of private education debts  
19 acquired or assumed in the prior fiscal year associated with each school  
20 identified under subparagraph (i) of this paragraph;

21 (vi) the overall default rate, as well as the overall default for such  
22 debts associated with each school listed under subparagraph (i) of this  
23 paragraph;

24 (vii) the total dollar amount and number of private education debts  
25 that defaulted for reasons other than nonpayment in the prior fiscal  
26 year, as applicable;

27 (viii) the total dollar amount and number of private education debts  
28 with a cosigner, as applicable;

29 (ix) the total dollar amount and number of private education debts  
30 that were used to refinance other private education debts, as applica-  
31 ble;

32 (x) the total dollar amount and number of private education debts for  
33 which the private education creditor has sued to collect in the prior  
34 fiscal year, as applicable; and

35 (xi) additional information as may in the judgment of the superinten-  
36 dent be necessary and appropriate in order to assess the total size and  
37 status of the private education debt market and to assess borrower well-  
38 being.

39 (c) For private education creditors that are providers of higher  
40 education and whose private education debts result from unpaid debts or  
41 obligations that were not extensions of credit and that result from  
42 higher education provided in this state, relating to such debts as of  
43 the end of the prior fiscal year, reported by race and gender:

44 (i) the total outstanding dollar amount and number of private educa-  
45 tion debts and number of consumers who owe those debts;

46 (ii) the total dollar amount and number of private education debts  
47 accrued and number of consumers who owe those debts in the prior fiscal  
48 year;

49 (iii) the total number and balance of student accounts with an academ-  
50 ic or administrative hold resulting from a private education debt;

51 (iv) the total number and balance of student accounts with an academic  
52 or administrative hold resulting from a private education debt for which  
53 a payment was made in the prior fiscal year and average payment made;

54 (v) the total number of student accounts for which federal financial  
55 aid was returned to the federal government upon the student's withdrawal

1 from the provider of higher education in the prior fiscal year, and the  
2 total dollar amount of any private education debt accrued as a result;

3 (vi) the number of consumers who owe a private education debt who  
4 received a federal pell grant and the average debt owed;

5 (vii) the number of consumers who owe a private education debt who are  
6 considered in-state and out-of-state students, and the total debt owed  
7 by each group;

8 (viii) the total dollar amount, number of private education debts, and  
9 number of consumers for which the private education creditor has in the  
10 prior fiscal year (A) charged off the debt, (B) sent the debt to a third  
11 party collection agency, (C) initiated a collection lawsuit, (D)  
12 reported the debt to a consumer credit reporting agency, and (E) sold  
13 the debt;

14 (ix) the total dollar amount, number of private education debts, and  
15 number of consumers for which the private education creditor has, in the  
16 prior fiscal year, collected on a private education debt in the follow-  
17 ing instances: (A) payment arrangements wherein the payment was not  
18 considered past due, such as tuition installment agreements; (B)  
19 payments made on past due debts during the same academic term or billing  
20 cycle in which the debt accrued and before such debts were sent to a  
21 collection agency; (C) payments made on past due debts before they were  
22 sent to a collection agency, excluding those payments made during the  
23 same academic term or billing cycle in which the debt accrued; (D) a  
24 third party collection agency, prior to initiating a lawsuit; and (E) a  
25 collection lawsuit, including payments made by settlement or pursuant to  
26 a judgment;

27 (x) additional information as may in the judgment of the superinten-  
28 dent be necessary and appropriate in order to assess the total size and  
29 status of the private education debt market and to assess borrower well-  
30 being; and

31 (xi) a copy of any model written instrument used by a provider of  
32 higher education in the prior fiscal year to substantiate a private  
33 education debt, including but not limited to a promissory note, enroll-  
34 ment agreement, or contract.

35 4. Not later than one year following the effective date of this  
36 section, the superintendent shall create a publicly accessible website  
37 that includes at least the following information about private education  
38 creditors registered in this state:

39 (a) The name, address, telephone number and website for all private  
40 education creditors;

41 (b) A summary of the information required by subdivision three of this  
42 section; and

43 (c) Copies of all documents provided under subparagraph (xv) of para-  
44 graph (a) of subdivision three of this section and subparagraph (xi) of  
45 paragraph (c) of subdivision three of this section.

46 § 903. Rules and regulations. In addition to such powers as may other-  
47 wise be prescribed by this chapter, the superintendent is hereby author-  
48 ized and empowered to promulgate such rules and regulations as may in  
49 the judgment of the superintendent be consistent with the purposes of  
50 this article, or appropriate for the effective administration of this  
51 article.

52 § 904. Violations. 1. If the superintendent finds, after notice and  
53 hearing, that a private education creditor has knowingly violated this  
54 article by failing to comply with any registration or reporting require-  
55 ment or by furnishing inaccurate information to the superintendent, any  
56 private education debt made to or incurred by a resident of this state

1 and owed to such private education creditor while such creditor was out  
2 of compliance with this article is void and unenforceable and the super-  
3 intendent may impose a civil penalty of not more than ten thousand  
4 dollars for each violation.

5 2. The superintendent may order that any person who has been found to  
6 have knowingly violated any provision of this article, or of the rules  
7 and regulations issued pursuant thereto, and has thereby caused finan-  
8 cial harm to consumers, be barred for a term not exceeding ten years  
9 from acting as a private education creditor, or a stockholder, or an  
10 officer, director, partner or other owner, or an employee of a private  
11 education creditor.

12 § 905. Severability. If any provision of this article or the applica-  
13 tion thereof to any person or circumstance is adjudged invalid by a  
14 court of competent jurisdiction, that judgment shall not affect or  
15 impair the validity of the other provisions of this article or the  
16 application thereof to other persons and circumstances.

17 § 2. This act shall take effect immediately.