

# STATE OF NEW YORK

5056--A

Cal. No. 1098

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 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged and said bill committed to the Committee on Rules -- reported favorably from said committee, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 article 2  
3 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 education  
12 creditor uses for financial reporting and budgeting.

13 2. "Higher education" means higher education, including career education,  
14 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.

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

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

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

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

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

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

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

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

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

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

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

29 6. "Provider of higher education" or "school" means a person engaged  
30 in the business of higher education. For the purposes of this defi-  
31 nition, a person need not have obtained authorization from the depart-  
32 ment of education to operate in this state and need not be an accredited  
33 institution.

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

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

51 (b) This subdivision shall not apply to regulated persons, as such  
52 term is defined in section one hundred four of this chapter, engaged in  
53 business as a private education creditor in this state, to the extent  
54 such regulation relates to its business as a private education creditor  
55 and such persons are required to furnish data or reports annually to the  
56 superintendent.

1 3. A private education creditor operating in this state shall annual-  
2 ly, on or before a date to be determined by the superintendent and not  
3 to exceed six months following the effective date of this article,  
4 provide the superintendent with the following documents and information  
5 about such creditor's private education debt portfolio related to  
6 consumers that reside in this state pursuant to any procedure set forth  
7 by the superintendent, which may include reporting through the Nation-  
8 wide Multistate Licensing System and Registry, and which may further  
9 include different procedures for regulated persons, as that term is  
10 defined in section one hundred four of this chapter, and non-regulated  
11 persons:

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

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

21 (ii) the total outstanding dollar amount and number of such private  
22 education debts and the number of consumers who owe such private educa-  
23 tion debts;

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

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

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

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

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

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

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

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

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

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

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

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

5 (xv) A copy of any model promissory note, agreement, contract or other  
6 instrument used by a private education creditor during the previous  
7 fiscal year to substantiate that a new private education debt has been  
8 extended to the consumer or that a consumer owes a debt or obligation to  
9 the private education creditor.

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

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

17 (ii) the total outstanding dollar amount and number of such private  
18 education debts and number of consumers who owe such private education  
19 debts;

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

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

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

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

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

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

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

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

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

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

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

53 (ii) the total dollar amount and number of private education debts  
54 accrued and number of consumers who owe those debts in the prior fiscal  
55 year;

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

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

6 (v) the total number of student accounts for which federal financial  
7 aid was returned to the federal government upon the student's withdrawal  
8 from the provider of higher education in the prior fiscal year, and the  
9 total dollar amount of any private education debt accrued as a result;

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

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

15 (viii) the total dollar amount, number of private education debts, and  
16 number of consumers for which the private education creditor has in the  
17 prior fiscal year (A) charged off the debt, (B) sent the debt to a third  
18 party collection agency, (C) initiated a collection lawsuit, (D)  
19 reported the debt to a consumer credit reporting agency, and (E) sold  
20 the debt;

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

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

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

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

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

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

50 (c) Copies of all documents provided under subparagraph (xv) of para-  
51 graph (a) of subdivision three of this section and subparagraph (xi) of  
52 paragraph (c) of subdivision three of this section.

53 § 903. Rules and regulations. In addition to such powers as may other-  
54 wise be prescribed by this chapter, the superintendent is hereby author-  
55 ized and empowered to promulgate such rules and regulations as may in  
56 the judgment of the superintendent be consistent with the purposes of

1 this article, or appropriate for the effective administration of this  
2 article.

3 § 904. Violations. 1. If the superintendent finds, after notice and  
4 hearing, that a private education creditor has knowingly violated this  
5 article by failing to comply with any registration or reporting require-  
6 ment or by furnishing inaccurate information to the superintendent, the  
7 superintendent may impose a civil penalty of not more than ten thousand  
8 dollars for each violation.

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

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

21 § 2. This act shall take effect immediately.