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:

Section 1. The financial services law is amended by adding a new article 9 to read as follows:

ARTICLE 9

PRIVATE EDUCATION DEBT REGISTRY

Section 901. Definitions.
902. Private education debt registry.
903. Rules and regulations.
904. Violations.
905. Severability.

§ 901. Definitions. As used in this article:

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

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

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

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

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4. "Private education creditor" means any person engaged in the business of securing, making, or extending a private education debt, or any holder of a private education debt, including providers of higher education to which a student education debt is owed. "Private education creditor" shall not include the following persons, only to the extent that state regulation is preempted by federal law:

(a) any federally chartered bank, savings bank, savings and loan association, or credit union;

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

(c) any wholly owned subsidiary of a federally chartered bank or credit union; and

(d) any operating subsidiary where each owner of the operating subsidiary is wholly owned by the same federally chartered bank or credit union.

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

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

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

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

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

6. "Provider of higher education" or "school" means a person engaged in the business of higher education. For the purposes of this definition, a person need not have obtained authorization from the department of education to operate in this state and need not be an accredited institution.

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

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

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

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

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

(i) a list of all schools for which such private education debts were used to finance higher education, including, in the case of a refinancing loan, the school that the consumer attended using the private education debt that was refinanced;

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

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

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

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

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

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

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

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

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

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

(xii) the total dollar amount and number of private education debts secured, made, or extended to refinance other private education debts or federal student loans, respectively, in the prior fiscal year, as applicable;

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

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

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

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

(i) a list of all schools for which such private education debts were used to finance higher education, including, in the case of a refinancing loan, the school that the consumer attended using the private education debt that was refinanced;

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

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

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

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

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

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

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

(ix) the total dollar amount and number of private education debts that were used to refinance other private education debts, as applicable;

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

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

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

(i) the total outstanding dollar amount and number of private education debts and number of consumers who owe those debts;

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

(iii) the total number and balance of student accounts with an academic or administrative hold resulting from a private education debt;

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

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

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

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

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

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

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

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

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

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

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

(c) Copies of all documents provided under subparagraph (xv) of paragraph (a) of subdivision three of this section and subparagraph (xi) of paragraph (c) of subdivision three of this section.

§ 903. 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.

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

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

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

§ 2. This act shall take effect immediately.