

No. 1982-102

AN ACT

SB 1094

Amending the act of August 7, 1963 (P.L.549, No.290), entitled, as amended, "An act creating the Pennsylvania Higher Education Assistance Agency; defining its powers and duties; conferring powers and imposing duties on the Governor, President Pro Tempore of the Senate, Speaker of the House of Representatives, Superintendent of Public Instruction and the Department of Auditor General; and making appropriations," providing an administrative loan collection process.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of August 7, 1963 (P.L.549, No.290), referred to as the Pennsylvania Higher Education Assistance Agency Act, is amended by adding a section to read:

Section 4.3. Administrative Loan Collection Process.—(a) The agency is hereby authorized and directed to maintain a record of administrative and legal actions and proceedings which it undertakes in regard to the collection of student loans. All such records shall be kept in the administrative offices of the agency and at reasonable times the record of a person against whom a statement of claim has been filed as provided herein shall be available for inspection by that person. The agency shall furnish, under seal of the agency when required for evidence in court, any accounts or records of accounts, papers or documents filed in the agency, relative to the granting of financial assistance to any appropriate borrower when required as evidence in any court and such certification shall be competent evidence thereof. The agency shall adopt and renew from time to time a seal of office, an impression of which shall be filed in the office of the Secretary of the Commonwealth.

(b) In addition to the remedies and procedures provided by law for the collection and enforcement of contractual rights, the agency may initiate action against borrowers whom it deems to be indebted to it by filing a statement of claim in the records maintained by the agency.

(c) The agency shall serve a summary of the statement of claim upon the borrower by first-class mail addressed to the most recent address as provided to the agency by the borrower, pursuant to the terms of the written obligation executed by the borrower, or otherwise acquired by the agency. The summary of the statement of claim shall contain such information as the agency deems necessary but in all instances shall contain the following:

(1) Identification of the agency as the body corporate and politic constituting a public corporation and government instrumentality, together with its address to which the borrower may respond.

- (2) *Name and last known address of the borrower.*
- (3) *Principal amount of money which the agency claims is due and owing to it including interest and late or other charges thereon and the material facts on which the claim is based.*
- (4) *The following notice which shall be prominently displayed on the first page of the claim:*

NOTICE

Legal action has been taken against you. If you do not file in writing your response to this action within thirty days of this notice, an order of default may be entered against you. You may lose money or property or other rights important to you by garnishment of your wages, salary or commission or other compensation or by levy of execution against your property or assets. You should take this paper to your lawyer immediately. If you do not have a lawyer or cannot afford one, you should call or write the office set forth below. You may qualify for free legal assistance.

(5) *The name and address of a lawyer referral service operated by the Pennsylvania Bar Association or one operating in the county in which the borrower was last known to reside.*

(6) *A statement that an order of default may be entered against the borrower without further notice.*

(d) *If the borrower does not file a response within thirty days from the date of service by first-class mail, the executive director of the agency may recommend to the board of directors of the agency that an order be entered by default and the board, in its discretion, may enter such an order of default to be lodged in the agency records.*

(e) *The borrower shall file a response to the statement of claim within the prescribed time after service by first-class mail. The response shall admit or deny all averments contained in the statement of claim. An averment in the statement of claim shall be deemed to be denied only if proof thereof is demanded and the borrower states either:*

(1) *that after reasonable investigation the borrower is without knowledge or information sufficient to form a belief as to the truth of the averment; or*

(2) *that the borrower is without such knowledge or information because the means of proof are within the exclusive control of an adverse party or hostile person. The response shall set forth all defenses and objections which the borrower has to the statement of claim and any objections or defenses not so presented shall be deemed to have been waived. The pleadings in any action pursuant to this act shall be limited to a statement of claim and a response thereto.*

(f) *The rules relating to discovery as promulgated by the Pennsylvania Supreme Court, and as amended from time to time, shall be applicable to all proceedings initiated pursuant to this act.*

(g) *If the borrower files a response the agency shall accord the borrower such administrative review as provided for in regulations and pro-*

cedures to be promulgated by the board of directors including but not limited to the right of appeal to the board of directors. Upon a final determination of debt by the agency and the board of directors, the executive director may recommend that an order of default be entered by the board of directors which may, in its discretion, enter such order of default in the agency records.

(h) (1) The executive director may transfer the record and an order of default to the court of common pleas of the district in which the borrower resides or when residence within the Commonwealth cannot be ascertained, to the Court of Common Pleas of Dauphin County, to be entered as a judgment. Thereafter it shall be the duty of the prothonotary, at the request of the executive director, to issue execution, or such other process as may be necessary and proper, to carry into effect the judgment entered upon such order of the board, subject to the applicable provisions of law or rules or procedure concerning stay of execution upon judgment.

(2) Within twenty days after entry of an order of default, the borrower may apply to the board of directors of the agency to vacate such order.

(3) Within twenty days after entry of judgment, the borrower may apply to the court in which the judgment is entered to set aside such judgment. Such relief shall be granted by a judge of such court if the borrower proves by a preponderance of the evidence that notice of the action was not made in proper manner or the borrower has a good faith defense to the statement of claim.

(4) Any person aggrieved by an order of default entered by the board of directors may appeal such order to the court of common pleas of the district in which the borrower resides or the Court of Common Pleas of Dauphin County. All such appeals shall be governed by the provisions of 2 Pa.C.S. § 701, et seq. and Chapter 15 of the Pennsylvania Rules of Appellate Procedure as heretofore adopted and subsequently amended by the Pennsylvania Supreme Court. Notwithstanding any of the foregoing, if the court determines that the petition for review and the answer thereto, if any, allege facts which would require a trial by jury, the court may schedule a hearing de novo. Any party to the action shall thereupon be entitled to a trial by jury. Such trial by jury shall be governed by the Rules of Civil Procedure as heretofore adopted and subsequently amended by the Pennsylvania Supreme Court.

(i) After an order of default has been entered by the board of directors or the court and the time for appeal has expired, the agency may execute upon the wages, salaries or commissions in the hands of an employer or any other person including the debtor when self-employed in order to effect the repayment of any sums due to the agency as determined by the provisions of this act. An employer shall include any person, partnership, association, corporation, institution, governmental body, unit or agency, school district or municipality, or any other entity employing one or more persons for a salary, wage, commission or other

compensation. The agency shall initiate such action by sending to the debtor's last known address notice of its intent and to the employer a notice of execution upon wages and upon receipt of such notice, the employer shall certify to the agency the amount of wages, salary, commissions or other compensation earned by the debtor. The employer shall pay to the agency such percentage of that amount as the agency demands, not to exceed ten per cent of the wages, salary, commissions or other compensation paid to the debtor during a given pay period, on a timely basis, but not less than once a month or over an extended period if agreed to by the agency. The agency may execute upon assets or property of a borrower by writ of execution or such other process as may be necessary or proper to carry into effect the judgment entered upon any order of the board. In the case of a writ of execution upon wages to recover moneys owed the agency, failure of an employer to pay to the agency the amount due within the prescribed amount and limits of time shall place the employer in contempt of the court issuing such writ of execution. Nothing herein shall deny to any debtor the rights afforded debtors under Federal and State exemption laws.

(j) There shall be no limitation of time restricting the filing of a statement of claim in the records of the agency or the entering of a judgment pursuant to this act, and no statute of limitations heretofore enacted shall apply to any causes of actions, claims or demands of the agency to recover any defaulted student loans or any moneys owed to the agency.

(k) The board of directors of the agency shall have the power and its duty shall be to adopt rules and regulations pursuant to the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law and not inconsistent with law governing matters relating to this section.

Section 2. This act shall take effect immediately.

APPROVED—The 29th day of April, A. D. 1982.

DICK THORNBURGH