

1 HOUSE BILL 82

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Christine Chandler

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10 AN ACT

11 RELATING TO FINANCIAL INSTITUTIONS; ENACTING THE STUDENT LOAN
12 BILL OF RIGHTS ACT; PROVIDING FOR A STUDENT LOAN SERVICER'S
13 LICENSE; DELINEATING THE DUTIES OF A STUDENT LOAN SERVICER;
14 GIVING ADMINISTRATIVE RESPONSIBILITY AND ENFORCEMENT POWER TO
15 THE FINANCIAL INSTITUTIONS DIVISION OF THE REGULATION AND
16 LICENSING DEPARTMENT; PROVIDING FOR DISCHARGE OF PRIVATE
17 EDUCATION LOANS UPON A SHOWING OF PERMANENT DISABILITY;
18 REQUIRING THAT ALTERNATIVE REPAYMENT OPTIONS BE OFFERED TO
19 BORROWERS EQUALLY; PROVIDING RIGHTS FOR COSIGNERS, INCLUDING
20 NOTICE AND ACCESS TO INFORMATION; PROVIDING FOR COSIGNER
21 RELEASE; PROHIBITING CERTAIN ACCELERATION OF PRIVATE EDUCATION
22 LOANS; CREATING THE POSITION OF STUDENT LOAN OMBUDSMAN;
23 DEFINING CERTAIN VIOLATIONS OF THE STUDENT BILL OF RIGHTS AS
24 UNFAIR AND UNCONSCIONABLE TRADE PRACTICES; CREATING A PRIVATE
25 RIGHT OF ACTION; CREATING THE STUDENT LOAN BILL OF RIGHTS FUND;

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1 MAKING AN APPROPRIATION.

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3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

4 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
5 through 27 of this act may be cited as the "Student Loan Bill
6 of Rights Act".

7 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
8 Student Loan Bill of Rights Act:

9 A. "cosigner":

10 (1) means an individual who is liable for the
11 obligation of another without compensation, regardless of how
12 the individual is designated in the contract or instrument with
13 respect to that obligation, including an obligation under a
14 private education loan extended to consolidate a borrower's
15 preexisting student loans;

16 (2) includes any person whose signature is
17 requested as a condition to grant credit or to forbear on
18 collection; and

19 (3) does not include a spouse of an individual
20 described in Paragraph (1) of this subsection, the signature of
21 whom is needed to perfect the security interest in a loan;

22 B. "director" means the director of the division;

23 C. "division" means the financial institutions
24 division of the regulation and licensing department;

25 D. "person" includes legal representatives,

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1 unincorporated organizations, trustees, fiduciaries and public
2 entities;

3 E. "post-secondary education expense" means any
4 expense associated with attendance at or enrollment in a public
5 or non-publicly funded post-secondary educational institution
6 as defined by Subsections F and G of Section 21-23-3 NMSA 1978
7 for expenses related to courses, instruction, training or
8 education;

9 F. "private education lender" or "lender" means any
10 person engaged in the business of securing, making or extending
11 private education loans or any holder of a private education
12 loan. "Private education lender" does not include the
13 following persons, only to the extent that state regulation is
14 preempted by federal law:

- 15 (1) a bank or credit union;
16 (2) a wholly owned subsidiary of a bank or
17 credit union;
18 (3) an operating subsidiary of a bank or
19 credit union where each owner of the operating subsidiary is
20 wholly owned by the same bank or credit union; and
21 (4) the higher education department;

22 G. "private education loan":

23 (1) means an extension of credit that is not
24 made, insured or guaranteed under Title IV of the federal
25 Higher Education Act of 1965;

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1 (2) means an extension of credit that is
2 extended to a consumer expressly, in whole or in part, for
3 post-secondary education expenses, regardless of whether the
4 loan is provided by the educational institution that the
5 student attends;

6 (3) does not include open-end credit or any
7 loan that is secured by real property or a dwelling; and

8 (4) does not include an extension of credit in
9 which the covered educational institution is the creditor if:

10 (a) the term of the extension of credit
11 is ninety days or less; or

12 (b) an interest rate shall not be
13 applied to the credit balance and the term of the extension of
14 credit is one year or less, even if the credit is payable in
15 more than four installments;

16 H. "servicing" includes:

17 (1) receiving scheduled periodic payments from
18 a student loan borrower pursuant to the terms of a student
19 education loan;

20 (2) applying payments of principal and
21 interest and other payments with respect to the amounts
22 received from a student loan borrower, as may be required
23 pursuant to the terms of a student education loan;

24 (3) maintaining account records for a student
25 education loan and communicating with a student loan borrower

1 regarding a loan on behalf of the loan's holder during a period
2 when no payment is required on the loan; and

3 (4) interacting with a student loan borrower
4 to help prevent default on obligations arising from a student
5 education loan;

6 I. "student education loan" means an extension of
7 credit primarily for personal use to finance a student loan
8 borrower's post-secondary education expenses, but does not
9 include an isolated personal loan made by an individual to
10 another for post-secondary education expenses;

11 J. "student loan borrower" means:

12 (1) a resident of New Mexico who has received
13 or agreed to pay a student education loan; or

14 (2) a person who shares responsibility with a
15 resident of New Mexico for repaying a student education loan;

16 K. "student loan servicer" means a person engaged
17 in the business of servicing student education loans in New
18 Mexico; and

19 L. "total and permanent disability" means the
20 condition of an individual who:

21 (1) has been determined by the United States
22 secretary of veterans affairs to be unemployable due to a
23 service-connected disability; or

24 (2) is unable to engage in any substantial
25 gainful activity by reason of any medically determinable

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1 physical or mental impairment that can be expected to result in
2 death, has lasted for a continuous period of not less than
3 twelve months or can be expected to last for a continuous
4 period of not less than twelve months."

5 SECTION 3. [NEW MATERIAL] LICENSE REQUIRED--EXEMPTIONS.--

6 A. A person shall not act directly or act
7 indirectly as a student loan servicer without first obtaining a
8 license from the division pursuant to the Student Loan Bill of
9 Rights Act, unless that person is exempt from licensure
10 pursuant to Subsection B of this section.

11 B. The following persons are exempt from licensing
12 requirements pursuant to the Student Loan Bill of Rights Act:

- 13 (1) a bank or credit union;
- 14 (2) a wholly owned subsidiary of a bank or
15 credit union;
- 16 (3) an operating subsidiary of a bank or
17 credit union where each owner of the operating subsidiary is
18 wholly owned by the same bank or credit union; and
- 19 (4) the higher education department.

20 SECTION 4. [NEW MATERIAL] LICENSE APPLICATION--
21 INVESTIGATION--LICENSE ISSUANCE.--

22 A. A person seeking to act as a student loan
23 servicer shall make a written application to the director for
24 an initial license in a form prescribed by the director. The
25 application shall include:

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1 (1) a financial statement of the person
2 applying, prepared by a certified or registered public
3 accountant, the accuracy of which is sworn to under oath before
4 a notary public by the proprietor, a general partner or a
5 corporate officer or a member duly authorized to execute such
6 documents;

7 (2) sufficient information pertaining to the
8 history of any criminal conviction of the applicant, whether an
9 individual or partner, member, officer, director or principal
10 employee of the applicant, as the director deems necessary to
11 make the findings required pursuant to Subsection F of this
12 section;

13 (3) a nonrefundable initial license fee not to
14 exceed five thousand dollars (\$5,000); and

15 (4) a nonrefundable investigation fee not to
16 exceed five thousand dollars (\$5,000).

17 B. The director may periodically reduce or increase
18 the amount of one or more of the fees in Subsection A of this
19 section, but in no case more than the initial fees.

20 C. The director may require or allow applications
21 to be made electronically through the nationwide multistate
22 licensing system and registry. An applicant using that system
23 shall pay all required processing fees for the system.

24 D. Upon the filing of an application for an initial
25 license and the payment of required fees, the director shall

1 investigate the financial condition and responsibility, the
2 financial and business experience and the character and general
3 fitness of the applicant.

4 E. The director may conduct a state and national
5 criminal history records check of the applicant and of each
6 partner, member, officer, director, trustee, fiduciary and
7 principal employee of the applicant.

8 F. The director shall issue a license for a student
9 loan servicer pursuant to the Student Loan Bill of Rights Act
10 if the director finds that:

11 (1) the applicant has submitted a completed
12 application;

13 (2) the applicant's financial condition is
14 sound;

15 (3) the applicant's business will be conducted
16 honestly, fairly, equitably, carefully, efficiently and in a
17 manner commanding the confidence and trust of the community;

18 (4) the applicant or a partner, member,
19 officer, director, trustee, fiduciary or principal employee of
20 the applicant has not been convicted of a crime that relates to
21 money lending, financing, financial matters, fiduciary status,
22 trustee status, fraud or another matter that substantially
23 relates to the qualifications, functions or duties of a student
24 loan servicer;

25 (5) a person has not made an incorrect

1 statement of a material fact on behalf of the applicant either
2 in the application or in a report or statement made pursuant to
3 the Student Loan Bill of Rights Act;

4 (6) a person on behalf of the applicant has
5 not knowingly omitted to state a material fact on behalf of the
6 applicant necessary to give the director information lawfully
7 required by the director pursuant to the Student Loan Bill of
8 Rights Act;

9 (7) the applicant has paid the license fee and
10 investigation fee required by this section;

11 (8) the applicant has met all other
12 requirements of the Student Loan Bill of Rights Act as
13 determined by the director; and

14 (9) if the applicant is:

15 (a) an individual, the individual is in
16 all respects properly qualified and of good character;

17 (b) a partnership, each partner is in
18 all respects properly qualified and of good character;

19 (c) a corporation or association, the
20 following are in all respects properly qualified and of good
21 character: 1) president; 2) executive committee chair; 3)
22 senior officer responsible for the corporation's business; 4)
23 chief financial officer; or 5) any other person who performs
24 functions similar to those described in Items 1) through 4) of
25 this subparagraph and as determined by the director; and 6)

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1 each director, each trustee and each shareholder owning ten
2 percent or more of each class of the securities of the
3 corporation or association; or

4 (d) a limited liability company, each
5 member is in all respects properly qualified and of good
6 character.

7 SECTION 5. [NEW MATERIAL] AUTOMATIC ISSUANCE OF LICENSE
8 FOR FEDERAL STUDENT LOAN SERVICING CONTRACTORS.--

9 A. A person seeking to act as a student loan
10 servicer is excepted from the application procedures described
11 in Subsection A of Section 4 of the Student Loan Bill of Rights
12 Act upon a determination by the director that the person's
13 student loan servicing performed in this state is conducted
14 pursuant to a contract awarded by the United States secretary
15 of education pursuant to 20 U.S.C. Section 1087f. The director
16 shall prescribe the procedure to document eligibility for the
17 exception.

18 B. A person deemed excepted by the director
19 pursuant to this section shall, upon payment of the fees
20 required by Section 4 of the Student Loan Bill of Rights Act,
21 automatically be issued a license by the director and shall be
22 considered by the director to have met all requirements set
23 forth in Subsection F of Section 4 of the Student Loan Bill of
24 Rights Act.

25 C. A person issued a license pursuant to this

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1 section is exempt from Paragraphs (1) through (3) of Subsection
2 A, Subsection B and Subsection F of Section 4 of the Student
3 Loan Bill of Rights Act. A person licensed pursuant to this
4 section shall comply with the record retention requirements in
5 Section 8 of the Student Loan Bill of Rights Act except to the
6 extent that the requirements are inconsistent with federal law.

7 D. A person issued a license pursuant to this
8 section shall provide the director with written notice within
9 seven days following notification of the expiration, revocation
10 or termination of a contract awarded by the United States
11 secretary of education pursuant to 20 U.S.C. Section 1087f.

12 The person has thirty days following notification to satisfy
13 all requirements established under Subsection F of Section 4 of
14 the Student Loan Bill of Rights Act in order to continue to act
15 as a student loan servicer. At the expiration of the thirty-
16 day period if the requirements have not been satisfied, the
17 director shall immediately suspend a license granted to the
18 person pursuant to this section.

19 E. With respect to student loan servicing not
20 conducted pursuant to a contract awarded by the United States
21 secretary of education pursuant to 20 U.S.C. Section 1087f,
22 nothing in this section prevents the director from issuing or
23 filing a civil action for an order to temporarily or
24 permanently bar a person from acting as a student loan servicer
25 or violating applicable law.

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1 SECTION 6. ~~[NEW MATERIAL]~~ LICENSE EXPIRATION--LICENSE
2 SURRENDER--LICENSE RENEWAL--LICENSE SUSPENSION--INFORMATION
3 UPDATE--LICENSE ABANDONMENT--NO ABATEMENT OF FEES.--

4 A. A license issued pursuant to the Student Loan
5 Bill of Rights Act shall expire at midnight on December 31 of
6 the year following its issuance, unless renewed or earlier
7 surrendered, suspended or revoked pursuant to the Student Loan
8 Bill of Rights Act.

9 B. Not later than fifteen days after a licensee
10 ceases to engage in the business of student loan servicing in
11 New Mexico for any reason, the licensee shall provide written
12 notice of surrender to the director and shall surrender to the
13 director its license for each location in which the licensee
14 has ceased to engage in the business of student loan servicing.
15 The written notice of surrender shall identify the location
16 where the records of the licensee will be stored and the name,
17 address and telephone number of an individual authorized to
18 provide access to the records. The surrender of a license does
19 not reduce or eliminate the licensee's civil or criminal
20 liability arising from acts or omissions occurring prior to the
21 surrender of the license, including administrative actions by
22 the director to revoke or suspend a license, assess a civil
23 penalty, order restitution or exercise any other authority
24 provided to the director in the Student Loan Bill of Rights
25 Act.

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1 C. A license may be renewed for the next twelve-
2 month period upon the filing of an application containing all
3 required documents and fees required by the Student Loan Bill
4 of Rights Act as for an initial license. The renewal
5 application shall be filed on or before November 1 of the year
6 in which the license expires. A renewal application filed with
7 the director after November 1 and before December 31 of the
8 year in which the license expires, but that is accompanied by a
9 one-hundred-dollar (\$100) late fee, shall be deemed to be
10 timely. If an application for a renewal license has been filed
11 with the director on or before the date the license expires,
12 the license sought to be renewed shall continue in full force
13 and effect until the director issues the renewed license or the
14 director has notified the licensee in writing of the director's
15 refusal to renew the license, including the grounds for the
16 refusal. The director may refuse to renew a license on any
17 ground upon which the director may refuse to issue an initial
18 license.

19 D. If the director determines that a check filed
20 with the director to pay a renewal fee has been dishonored, the
21 director shall automatically suspend the license. The director
22 immediately shall give the licensee notice of the automatic
23 suspension by any practicable means and initiate proceedings
24 for revocation or refusal to renew and an opportunity for a
25 hearing on that action pursuant to the Uniform Licensing Act.

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1 E. The applicant or licensee shall notify the
2 director, in writing, of any change in the information provided
3 in its initial application for a license or its most recent
4 renewal application for that license, as applicable, not later
5 than ten business days after the occurrence of the event that
6 results in that information becoming inaccurate.

7 F. The director shall deem an application for a
8 license abandoned if the applicant fails to respond to a
9 request for information required by the Student Loan Bill of
10 Rights Act. The director shall notify the applicant, in
11 writing, that if the applicant fails to submit that information
12 not later than sixty days after the date on which that request
13 for information was made, the application shall be deemed
14 abandoned. An application filing fee paid before the date an
15 application is deemed abandoned pursuant to this subsection
16 shall not be refunded. Abandonment of an application does not
17 preclude the applicant from submitting a new application for a
18 license pursuant to the Student Loan Bill of Rights Act.

19 G. A license fee paid pursuant to the Student Loan
20 Bill of Rights Act shall not be abated.

21 SECTION 7. [NEW MATERIAL] LICENSEE NAMES AND LOCATIONS--
22 TRANSFERABILITY--ASSIGNABILITY.--

23 A. A licensed student loan servicer shall not
24 service student education loans under a name or at a place of
25 business other than as listed in the license. A change of a

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1 place of business shall require prior written notice to the
2 director. Not more than one place of business shall be
3 maintained under the same license, but the director may issue
4 more than one license to the same licensee that is in
5 compliance with the provisions of the Student Loan Bill of
6 Rights Act.

7 B. A license for a student loan servicer is not
8 transferable or assignable.

9 SECTION 8. [NEW MATERIAL] RECORD RETENTION.--

10 A. All private education lenders and student loan
11 servicers shall maintain adequate records of each student
12 education loan transaction for at least six years following the
13 final payment on a student education loan or the assignment of
14 a student education loan, whichever occurs first, or a longer
15 period the director may require.

16 B. Within five business days of receipt of a
17 request for student education loan records from the director, a
18 private education lender or student loan servicer shall make
19 the records available to the director, or shall send the
20 records to the director by registered or certified mail, return
21 receipt requested, or by any express delivery carrier that
22 provides a dated delivery receipt. Upon request, the director
23 may grant a licensee additional time to make the records
24 available or send the records to the director.

25 SECTION 9. [NEW MATERIAL] STUDENT LOAN SERVICERS.--Except

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1 as otherwise provided in federal law, a federal student
2 education loan agreement or a contract between the federal
3 government and a student loan servicer, a student loan servicer
4 shall comply with the following requirements:

5 A. upon receipt of a written inquiry from a student
6 loan borrower or the representative of a student loan borrower,
7 a student loan servicer shall respond by:

8 (1) acknowledging receipt of the written
9 inquiry within ten days; and

10 (2) within thirty days after receiving the
11 inquiry, providing information relating to the inquiry and, if
12 applicable, the action the student loan servicer will take to
13 correct the student loan borrower's account or an explanation
14 of the student loan servicer's position that the borrower's
15 account is correct, including copies of all information and
16 account information used by the student loan servicer in
17 reaching the determination;

18 B. a student loan servicer shall inquire of a
19 student loan borrower how to apply an overpayment or prepayment
20 to a student education loan. A student loan borrower's
21 direction on how to apply an overpayment or prepayment to a
22 student education loan shall stay in effect for any future
23 overpayments or prepayments during the term of a student
24 education loan until the borrower provides different
25 directions. For purposes of this subsection, "overpayment" or

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1 "prepayment" means a payment on a student education loan in
2 excess of the monthly amount due from a borrower on a student
3 education loan;

4 C. in the absence of a direction provided by a
5 student loan borrower pursuant to Subsection B of this section,
6 a student loan servicer shall allocate an overpayment on a
7 student loan account in a manner that is in the best financial
8 interest of a student loan borrower. A student loan servicer
9 shall be considered to meet the requirements of this subsection
10 if the servicer allocates the overpayment to the loan with the
11 highest interest rate on the borrower's student loan account,
12 unless the borrower specifies otherwise. For the purposes of
13 this subsection, "best financial interest of a student loan
14 borrower" means reducing the total cost of the student loan,
15 including principal and balance, interest and fees;

16 D. in the absence of a direction provided by a
17 student loan borrower pursuant to Subsection B of this section,
18 a student loan servicer shall apply a partial payment or
19 underpayment in a manner that minimizes late fees and negative
20 credit reporting. When loans on a student loan borrower's
21 account have an equal stage of delinquency, a student loan
22 servicer shall apply a partial payment or underpayment to
23 satisfy as many individual loan payments as possible on a
24 borrower's account. For purposes of this subsection, "partial
25 payment" or "underpayment" means a payment on a student

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1 education loan account that contains multiple individual loans
2 in an amount less than the amount necessary to satisfy the
3 outstanding payment due on all loans in the student education
4 loan account;

5 E. as a condition of the sale, assignment or
6 transfer, the student loan servicer shall require the new
7 student loan servicer to honor all benefits originally
8 represented as available to the student loan borrower during
9 the repayment of the student education loan and preserve the
10 availability of those benefits, including benefits for which
11 the student loan borrower has not yet qualified. If a student
12 loan servicer is not also the loan holder or is not acting on
13 behalf of the loan holder, the student loan servicer satisfies
14 the requirement established by this subsection by providing the
15 new student loan servicer with information necessary for the
16 new student loan servicer to honor all benefits originally
17 represented as available to a student loan borrower during the
18 repayment of the student education loan and preserve the
19 availability of those benefits, including benefits for which
20 the student loan borrower has not yet qualified:

21 (1) the student loan servicer shall transfer
22 to the new student loan servicer all information regarding the
23 student loan borrower, the account of the student loan borrower
24 and the student education loan of the student loan borrower,
25 including the repayment status of the student loan borrower and

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1 any benefits associated with the student education loan of the
2 student loan borrower;

3 (2) the sale, assignment or transfer of the
4 servicing of the student education loan must be completed
5 within forty-five days after the sale, assignment or other
6 transfer of the servicing of a student education loan; and

7 (3) the parties shall notify affected student
8 loan borrowers of the sale, assignment or other transfer of the
9 servicing of the student education loan at least seven days
10 before the next payment on the loan is due. This notice must
11 include:

12 (a) the identity of the new student loan
13 servicer;

14 (b) the effective date of the transfer
15 of the student loan borrower's student education loan to the
16 new student loan servicer;

17 (c) the date on which the existing
18 student loan servicer will no longer accept payments; and

19 (d) the contact information for the new
20 student loan servicer;

21 F. a student loan servicer that obtains the right
22 to service a student education loan shall adopt policies and
23 procedures to verify that the student loan servicer has
24 received all information regarding the student loan borrower,
25 the account of the student loan borrower and the student

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1 education loan of the student loan borrower, including the
2 repayment status of the student loan borrower and any benefits
3 associated with the student education loan of the student loan
4 borrower. The director may investigate these policies and
5 procedures; and

6 G. a student loan servicer shall inform the student
7 loan borrower about the availability of a repayment program
8 based on income prior to placing the borrower in forbearance or
9 default, if a repayment program based on income is available to
10 the borrower.

11 SECTION 10. [NEW MATERIAL] STUDENT LOAN SERVICERS--
12 PROHIBITED ACTS--UNFAIR TRADE PRACTICE--LIABILITY.--

13 A. A student loan servicer shall not:

14 (1) directly or indirectly employ a scheme,
15 device or artifice to defraud or mislead a student loan
16 borrower;

17 (2) engage in an unfair or deceptive trade
18 practice or unconscionable trade practice toward a person or
19 misrepresent or omit material information in connection with
20 the servicing of a student education loan, including
21 misrepresenting the amount, nature or terms of a fee or payment
22 due or claimed to be due on a student education loan, the terms
23 and conditions of the loan agreement or the student loan
24 borrower's obligations under the loan;

25 (3) engage in abusive acts or practices when

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1 servicing a student education loan. An abusive act or practice
2 includes:

3 (a) material interference with the
4 ability of a student loan borrower to understand a term or
5 condition of a student education loan; or

6 (b) taking unreasonable advantage of any
7 of the following: 1) a lack of understanding on the part of a
8 student loan borrower of the material risks, costs or
9 conditions of the student education loan; 2) the inability of a
10 student loan borrower to protect the borrower's interests when
11 selecting or using a student education loan or a feature, term
12 or condition of a student education loan; or 3) the reasonable
13 reliance by the student loan borrower on a person engaged in
14 servicing a student education loan to act in the interests of
15 the borrower;

16 (4) obtain property by fraud or
17 misrepresentation;

18 (5) misapply student education loan payments
19 to the outstanding balance of a student education loan;

20 (6) provide inaccurate information to a credit
21 bureau;

22 (7) fail to report a favorable or unfavorable
23 payment history of a student loan borrower to a nationally
24 recognized consumer credit bureau at least annually if the
25 student loan servicer regularly reports information to a credit

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1 bureau;

2 (8) refuse to communicate with an authorized
3 representative of a student loan borrower who provides a
4 written authorization signed by the student loan borrower;
5 provided that the student loan servicer may adopt procedures
6 reasonably related to verifying that the representative is
7 authorized to act on behalf of the student loan borrower;

8 (9) negligently make a false statement or
9 knowingly and willfully make an omission of a material fact in
10 connection with any information or report filed with a
11 governmental agency or in connection with an investigation
12 conducted by the director or another governmental agency;

13 (10) fail to properly evaluate a student loan
14 borrower for an income-driven or other student loan repayment
15 program or for eligibility for a public service loan
16 forgiveness program before placing the student loan borrower in
17 forbearance or default, if an income-driven repayment or other
18 program is available to the student loan borrower except as
19 otherwise provided in federal law, federal student loan
20 agreements or a contract between the federal government and a
21 student loan servicer;

22 (11) fail to respond within fifteen days to
23 communication from the student loan ombudsman, or within a
24 shorter reasonable time as the student loan ombudsman may
25 request in the communication; or

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1 (12) fail to respond within fifteen days to a
2 student loan borrower complaint submitted to the servicer by
3 the student loan ombudsman. If necessary, a student loan
4 servicer may request additional time, up to forty-five days, as
5 long as the request is accompanied by an explanation of why
6 additional time is reasonable and necessary.

7 B. A violation of this section is an unfair or
8 deceptive trade practice or an unconscionable trade practice
9 pursuant to the Unfair Practices Act and is subject to the
10 enforcement and penalty provisions contained in that act.

11 SECTION 11. [NEW MATERIAL] DISABILITY DISCHARGE.--

12 A. For a private education loan issued or executed
13 on or after the effective date of the Student Loan Bill of
14 Rights Act, a private education lender or student loan servicer
15 acting on behalf of a private education lender, when notified
16 of the total and permanent disability of a student loan
17 borrower or cosigner, shall release any cosigner from the
18 obligations under a private education loan. The lender shall
19 not attempt to collect a payment from a cosigner upon notice of
20 total and permanent disability of the cosigner or borrower.

21 B. A lender shall notify a student loan borrower
22 and cosigner for a private education loan if either the
23 cosigner or borrower is released from the obligations of the
24 private education loan under this section within thirty days of
25 the release.

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1 C. Any lender that extends a private education loan
2 shall provide the student loan borrower an option to designate
3 an individual to have the legal authority to act on behalf of
4 the borrower with respect to the private education loan in the
5 event of the total and permanent disability of the borrower.

6 D. In the event a cosigner is released from the
7 obligations of a private education loan pursuant to Subsection
8 A of this section, the lender shall not require the student
9 loan borrower to obtain another cosigner on the loan
10 obligation.

11 E. In the event a cosigner is released from the
12 obligations of a private education loan pursuant to Subsection
13 A of this section, a lender shall not declare a default or
14 accelerate the debt against the student loan borrower on the
15 sole basis of the release of the cosigner from the loan
16 obligation.

17 F. A lender shall, when notified of the total and
18 permanent disability of a student loan borrower, discharge the
19 liability of the borrower and cosigner on the loan.

20 G. After receiving a notification described in
21 Subsection F of this section, the lender shall not attempt to
22 collect on the outstanding liability of the student loan
23 borrower or cosigner or monitor the disability status of the
24 borrower at any point after the date of discharge.

25 SECTION 12. [NEW MATERIAL] AVAILABILITY OF ALTERNATIVE

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1 REPAYMENT OPTIONS.--

2 A. If a private education lender offers any student
3 loan borrower flexible or modified repayment options in
4 connection with a private education loan, those flexible
5 repayment options shall be made available to all borrowers of
6 loans by the lender. A lender shall:

7 (1) provide on its website a description of
8 any alternative repayment options offered by the lender for
9 private education loans; and

10 (2) establish policies and procedures and
11 implement them consistently in order to facilitate evaluation
12 of private education loan flexible repayment option requests,
13 including providing accurate information regarding any private
14 education loan alternative repayment options that may be
15 available to the student loan borrower through the promissory
16 note or that may have been marketed to the borrower through
17 marketing materials.

18 B. A private education lender or a student loan
19 servicer acting on behalf of a private education lender shall
20 consistently present and offer flexible or modified private
21 education loan repayment options to student loan borrowers with
22 similar financial circumstances if the lender offers such
23 repayment options.

24 SECTION 13. [NEW MATERIAL] NOTICES REQUIRED AT
25 ORIGINATION.--

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1 A. Prior to the extension of a private education
2 loan that requires a cosigner, a private education lender shall
3 deliver the following information to the cosigner:

4 (1) how the private education loan obligation
5 shall appear on the cosigner's credit;

6 (2) how the cosigner shall be notified if the
7 private education loan becomes delinquent, including how the
8 cosigner can cure the delinquency in order to avoid negative
9 credit furnishing and loss of cosigner release eligibility; and

10 (3) eligibility for release of the cosigner's
11 obligation on the private education loan, including the number
12 of on-time payments and any other criteria required to approve
13 the release of the cosigner from the loan obligation.

14 B. Prior to offering a person a private education
15 loan that is being used to refinance an existing education
16 loan, a private education lender shall provide the person a
17 disclosure that benefits and protections applicable to the
18 existing loan may be lost due to the refinancing.

19 C. The information provided pursuant to this
20 section shall be provided on a one-page information sheet in a
21 twelve-point font and shall be written in simple, clear,
22 understandable and easily readable language as provided in
23 P.L.1980, c.125 (C.56:12-1 et seq.).

24 SECTION 14. [NEW MATERIAL] COSIGNER RELEASE.--

25 A. For any private education loan that obligates a

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1 cosigner, a lender shall provide the student loan borrower and
2 the cosigner an annual written notice containing information
3 about cosigner release, including the administrative,
4 non-judgmental criteria the lender requires to approve the
5 release of the cosigner from the loan obligation and the
6 process for applying for cosigner release.

7 B. If the student loan borrower has met the
8 applicable payment requirement to be eligible for cosigner
9 release, the lender shall send the borrower and the cosigner a
10 written notification by mail and by electronic mail, where a
11 borrower or cosigner has elected to receive electronic
12 communications from the lender, informing the borrower and
13 cosigner that the payment requirement to be eligible for
14 cosigner release has been met. The notification shall also
15 include information about any additional criteria to qualify
16 for cosigner release and the procedure to apply for cosigner
17 release.

18 C. A lender shall provide written notice to a
19 student loan borrower who applies for cosigner release but
20 whose application is incomplete. The written notice shall
21 include a description of the information needed to consider the
22 application complete and the date by which the applicant shall
23 furnish the missing information.

24 D. Within thirty days after a student loan borrower
25 submits a completed application for cosigner release, the

1 lender shall send the borrower and cosigner a written notice
2 that informs the borrower and cosigner whether the cosigner
3 release application has been approved or denied. If the lender
4 denies a request for cosigner release, the student loan
5 borrower may request any documents or information used in the
6 determination, including the credit score threshold used by the
7 lender, the borrower's consumer report, the borrower's credit
8 score and any other documents specific to the borrower. The
9 lender shall also provide any adverse action notices required
10 under applicable federal law if the denial is based in whole or
11 in part on any information contained in a consumer report.

12 E. In response to a written or oral request for
13 cosigner release, a lender shall provide the information
14 described in Subsection B of this section.

15 F. A lender shall not impose any restriction that
16 permanently bars a student loan borrower from qualifying for
17 cosigner release, including restricting the number of times a
18 borrower may apply for cosigner release.

19 G. A lender shall not impose any negative
20 consequences on any student loan borrower or cosigner during
21 the sixty days following the issuance of the notice required
22 pursuant to Subsection C of this section, or until the lender
23 makes a final determination about a borrower's cosigner release
24 application. For the purpose of this subsection, "negative
25 consequences" includes the imposition of additional eligibility

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1 criteria, negative credit reporting, lost eligibility for
2 cosigner release, late fees, interest capitalization or other
3 financial injury.

4 H. For a private education loan issued or executed
5 on or after the effective date of the Student Loan Bill of
6 Rights Act, a lender shall not require more than twelve
7 consecutive on-time payments as criteria for cosigner release.
8 Any student loan borrower who has paid the equivalent of twelve
9 months of principal and interest payments within any twelve-
10 month period shall be considered to have satisfied the
11 consecutive on-time payment requirement, even if the borrower
12 has not made payments monthly during the twelve-month period.

13 I. If a student loan borrower or cosigner requests
14 a change in terms that restarts the count of consecutive
15 on-time payments required for cosigner release, the lender
16 shall notify the borrower and cosigner in writing of the impact
17 of the change and provide the borrower or cosigner the right to
18 withdraw or reverse the request to avoid that impact.

19 J. A student loan borrower shall have the right to
20 request an appeal of a lender's determination to deny a request
21 for cosigner release, and the lender shall permit the borrower
22 to submit additional documentation evidencing the borrower's
23 ability, willingness and stability to meet the payment
24 obligations. The student loan borrower may request review of
25 the cosigner release determination by another employee.

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1 K. A lender shall establish and maintain a
2 comprehensive record management system reasonably designed to
3 ensure the accuracy, integrity and completeness of data and
4 other information about cosigner release applications and to
5 ensure compliance with applicable state and federal laws,
6 including the federal Equal Credit Opportunity Act and the
7 federal Fair Credit Reporting Act. This system shall include
8 the number of cosigner release applications received, the
9 approval and denial rate and the primary reasons for any
10 denial.

11 SECTION 15. [NEW MATERIAL] INFORMATION AVAILABLE TO
12 COSIGNERS.--

13 A. A lender shall provide a cosigner with access to
14 all documents or records related to the cosigned private
15 education loan that are available to the student loan borrower.

16 B. If a lender provides electronic access to
17 documents and records for a student loan borrower, the lender
18 shall provide equivalent electronic access to the cosigner.

19 C. Upon written notice from the student loan
20 borrower or cosigner, the lender shall redact or withhold
21 contact information for the borrower and cosigner.

22 SECTION 16. [NEW MATERIAL] PROHIBITIONS ON THE
23 ACCELERATION OF PRIVATE EDUCATION LOANS.--

24 A. A private education loan executed on or after
25 the effective date of the Student Loan Bill of Rights Act shall

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1 not include a provision that permits the private education
2 lender to accelerate, in whole or in part, payments on the
3 private education loan, except in cases of payment default. A
4 lender shall not place any loan or account into default or
5 accelerate a loan for any reason, other than for payment
6 default.

7 B. A private education loan executed prior to the
8 effective date of the Student Loan Bill of Rights Act shall
9 permit the lender to accelerate payments only if the promissory
10 note or loan agreement explicitly authorizes an acceleration
11 and only for the reasons stated in the note or agreement.

12 C. In the event of the death of a cosigner, the
13 lender shall not attempt to collect against the cosigner's
14 estate, other than for payment default.

15 D. Upon receiving notification of the death or
16 bankruptcy of a cosigner, when the private education loan is
17 not more than sixty days delinquent at the time of the
18 notification, the lender shall not change any terms or benefits
19 under the promissory note, repayment schedule, repayment terms
20 or monthly payment amount or any other provision associated
21 with the private education loan.

22 E. A lender shall not place any private loan or
23 account into default or accelerate a private loan while a
24 borrower is seeking a private loan modification or enrollment
25 in a flexible repayment plan, except that a lender may place a

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1 private loan or account into default or accelerate a private
2 loan for payment default ninety days following the student loan
3 borrower's default.

4 SECTION 17. [NEW MATERIAL] PRIVATE EDUCATION LENDERS--
5 PROHIBITED ACTS.--

6 A. A private education lender shall not:

7 (1) offer any private education loan that is
8 not in conformity with the Student Loan Bill of Rights Act or
9 that is in violation of any other state or federal law;

10 (2) make a private education loan upon
11 security of any assignment of or order for the payment of any
12 salary, wages, commissions or other compensation for services
13 earned or to be earned. No assignment or order shall be taken
14 by a lender in connection with a private education loan, or for
15 the enforcement or repayment thereof, and any assignment or
16 order taken or given to secure any loan made by any lender
17 under the Student Loan Bill of Rights Act shall be void;

18 (3) directly or indirectly employ a scheme,
19 device or artifice to defraud or mislead a student loan
20 borrower or cosigner;

21 (4) engage in an unfair or deceptive trade
22 practice or unconscionable trade practice toward a person or
23 misrepresent or omit material information in connection with
24 the lending or servicing of a private education loan, including
25 misrepresenting the amount, nature or terms of a fee or payment

1 due or claimed to be due on a private education loan, the terms
2 and conditions of the loan agreement or the student loan
3 borrower's or cosigner's obligations under the loan;

4 (5) engage in abusive acts or practices when
5 lending or servicing a private education loan. An abusive act
6 or practice includes:

7 (a) material interference with the
8 ability of a student loan borrower or cosigner to understand a
9 term or condition of a private education loan; or

10 (b) taking unreasonable advantage of any
11 of the following: a lack of understanding on the part of a
12 student loan borrower or cosigner of the material risks, costs
13 or conditions of the private education loan; the inability of a
14 student loan borrower or cosigner to protect the borrower's or
15 cosigner's interests when selecting or using a private
16 education loan or a feature, term or condition of a private
17 education loan; or the reasonable reliance by the student loan
18 borrower or cosigner on a person engaged in lending or
19 servicing a private education loan to act in the interests of
20 the borrower or cosigner;

21 (6) obtain property by fraud or
22 misrepresentation;

23 (7) misapply private education loan payments
24 to the outstanding balance of a student education loan;

25 (8) provide inaccurate information to a credit

1 bureau;

2 (9) fail to report a favorable or unfavorable
3 payment history of a student loan borrower or cosigner to a
4 nationally recognized consumer credit bureau at least annually
5 if the private education lender regularly reports information
6 to a credit bureau;

7 (10) refuse to communicate with an authorized
8 representative of a student loan borrower or cosigner who
9 provides a written authorization signed by the student loan
10 borrower; provided that the private education lender may adopt
11 procedures reasonably related to verifying that the
12 representative is authorized to act on behalf of the student
13 loan borrower;

14 (11) negligently make a false statement or
15 knowingly and willfully make an omission of a material fact in
16 connection with any information or report filed with a
17 governmental agency or in connection with an investigation
18 conducted by the director or another governmental agency;

19 (12) fail to respond within fifteen days to
20 communication from the student loan ombudsman, or within a
21 shorter reasonable time as the student loan ombudsman may
22 request in the communication; or

23 (13) fail to respond within fifteen days to a
24 student loan borrower or cosigner complaint submitted to the
25 lender by the student loan ombudsman. If necessary, a private

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1 education lender may request additional time, up to forty-five
2 days, as long as the request is accompanied by an explanation
3 of why additional time is reasonable and necessary.

4 B. A violation of this section is an unfair or
5 deceptive trade practice or an unconscionable trade practice
6 pursuant to the Unfair Practices Act and is subject to the
7 enforcement and penalty provisions contained in that act.

8 SECTION 18. [NEW MATERIAL] MARKET MONITORING.--

9 A. The director may monitor for risks to consumers
10 in the provision of student loan servicing and student
11 education loans, including private education loans in New
12 Mexico and developments in the market for those services, by
13 compiling and analyzing data and other information based on any
14 of the following considerations:

15 (1) the likely risks and costs to consumers
16 associated with using or repaying a student education loan or
17 with the servicing of a student education loan;

18 (2) the understanding by consumers of the
19 risks of a student education loan or the servicing of a student
20 education loan;

21 (3) the legal protections applicable to the
22 offering or provision of a student education loan or the
23 servicing of a student education loan, including the extent to
24 which the law is likely to adequately protect consumers;

25 (4) the rates of growth in the offering or

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1 provision of a student education loan or the servicing of that
2 loan;

3 (5) the extent, if any, to which the risks of
4 a student education loan or the servicing of a student
5 education loan disproportionately affect traditionally
6 underserved consumers; and

7 (6) the type, number and other pertinent
8 characteristics of private education lenders and student loan
9 servicers in New Mexico.

10 B. In conducting monitoring or assessment
11 authorized by this section, the director may gather information
12 regarding the organization, business conduct, markets and
13 activities of private education lenders and student loan
14 servicers in New Mexico, except if that private education
15 lender or student loan servicer is a national bank as defined
16 in 12 U.S.C. Section 25b, and only to the extent that the
17 requirements of this subsection are preempted with respect to
18 national banks pursuant to 12 U.S.C. Section 25B, et seq. The
19 director may enter into contracts to perform the duties
20 required by this section, as necessary.

21 C. In order to gather information described in
22 Subsection B of this section, the director may do the
23 following:

24 (1) gather and compile information from a
25 variety of sources, including consumer complaints, voluntary

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1 surveys and voluntary interviews of consumers, surveys and
2 interviews with private education lenders and student loan
3 servicers and service providers, and review of available
4 databases; and

5 (2) require persons engaged in private
6 education lending or student loan servicing and subject to the
7 Student Loan Bill of Rights Act to file, under oath or
8 otherwise, in the form and within a reasonable period of time
9 as the director may prescribe, annual or special reports, or
10 answers in writing to specific questions, as necessary for the
11 director to fulfill the monitoring, assessment and reporting
12 responsibilities set forth in this section.

13 D. In addition to any other market monitoring
14 activities deemed necessary by the director pursuant to
15 Subsection A of this section, the division may gather and
16 compile information from private education lenders and student
17 loan servicers to assemble data that assesses the total size of
18 the student loan market in New Mexico, the servicing of loans
19 owed by borrowers at risk of default, the servicing of private
20 education loans owed by borrowers experiencing financial
21 distress and the servicing of federal student education loans
22 for borrowers who seek to repay their loans under an
23 income-driven repayment plan as described in Section 1070 et
24 seq. of Title 20 of the United States Code.

25 E. The director may, on a quarterly basis, develop

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1 and publicize metrics based on data collected pursuant to this
2 section, and those metrics may identify each private education
3 lender and student loan servicer and publish relevant metrics
4 related to performance of each such persons. In executing the
5 function described in this section, the director may meet and
6 confer with the student loan ombudsman, the office of the
7 attorney general and the higher education department.

8 F. To fulfill the monitoring and assessment
9 authorized by this section and to carry out the purposes of
10 this section, the director may:

11 (1) retain attorneys, accountants or other
12 professionals;

13 (2) enter into agreements or relationships
14 with other government officials or regulatory associations to
15 improve efficiencies and reduce regulatory burden by sharing
16 resources, standardized or uniform methods or procedures and
17 documents, records, information or evidence obtained pursuant
18 to this section;

19 (3) use, hire, contract or employ public or
20 privately available analytical systems, methods or software;

21 (4) rely on examination or investigation
22 reports made by other government officials, whether in or
23 outside of New Mexico; and

24 (5) accept audit reportings made by an
25 independent certified public accountant for the private

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1 education lender, student loan servicer or person subject to
2 the Student Loan Bill of Rights Act.

3 SECTION 19. [NEW MATERIAL] POWERS OF THE DIRECTOR.--

4 A. The director may conduct investigations and
5 examinations for purposes of initial licensing, license
6 renewal, license suspension, license revocation or termination,
7 or for general or specific inquiry or investigation, to
8 determine compliance with the Student Loan Bill of Rights Act.
9 The director may access, receive and use any documents,
10 information or evidence the director deems relevant to the
11 inquiry or investigation regardless of the location,
12 possession, control or custody of those documents or that
13 information or evidence.

14 B. For the purposes of investigating violations or
15 complaints arising pursuant to the Student Loan Bill of Rights
16 Act or for the purposes of examination, the director may
17 review, investigate or examine the activities of any private
18 education lender or student loan servicer as often as necessary
19 to carry out the purposes of that act. The director may
20 direct, subpoena or order the attendance of and examine under
21 oath a person whose testimony may be required about the student
22 education loan or the business or subject matter of the
23 examination or investigation and may direct, subpoena or order
24 the person to produce books, accounts, records, files and any
25 other documents the director deems relevant to the inquiry.

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1 C. In making an examination or investigation
2 authorized by the Student Loan Bill of Rights Act, the director
3 may control access to any documents or records of the student
4 loan servicer licensee or person under examination or
5 investigation related to the student education loan. The
6 director may take possession of the documents and records or
7 place a person in exclusive charge of the documents and records
8 in the place where the documents and records are usually kept.
9 During the period of control, a person shall not remove or
10 attempt to remove any of the documents and records except
11 pursuant to a court order or with the consent of the director.
12 Unless the director has reasonable grounds to believe the
13 documents or records of the student loan servicer licensee or
14 person have been, or are at risk of being, altered or destroyed
15 for purposes of concealing a violation of the Student Loan Bill
16 of Rights Act, the student loan servicer licensee or owner of
17 the documents and records shall have access to the documents or
18 records as necessary to conduct its ordinary business affairs.
19 Nothing in this subsection shall be construed as limiting the
20 student loan borrower's access to the borrower's own account
21 records.

22 D. To fulfill the duties imposed by this section
23 and to carry out the purposes of this section, the director
24 may:

- 25 (1) retain attorneys, accountants or other

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1 professionals and specialists as examiners, auditors or
2 investigators to conduct or assist in the conduct of
3 examinations or investigations;

4 (2) enter into agreements or relationships
5 with other government officials or regulatory associations to
6 improve efficiencies and reduce regulatory burden by sharing
7 resources, standardized or uniform methods or procedures and
8 documents, records, information or evidence obtained pursuant
9 to this section;

10 (3) use, hire, contract or employ public or
11 privately available analytical systems, methods or software to
12 examine or investigate the student loan servicer, private
13 education lender or person subject to the Student Loan Bill of
14 Rights Act;

15 (4) rely on examination or investigation
16 reports made by other government officials, whether in or
17 outside of New Mexico; and

18 (5) accept audit reports made by an
19 independent certified public accountant for the student loan
20 servicer, private education lender or person subject to the
21 Student Loan Bill of Rights Act in the course of that part of
22 the examination covering the same general subject matter as the
23 audit and may incorporate the audit report in the report of
24 examination, report of investigation or other writing of the
25 director.

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1 E. A student loan servicer, private education
2 lender or person subject to investigation or examination under
3 this section shall not knowingly withhold, abstract, remove,
4 mutilate, destroy or secrete any books, records, computer
5 records or other information.

6 F. The costs of an investigation or examination
7 conducted by the director shall be paid by the student loan
8 servicer, private education lender or person being
9 investigated. When it becomes necessary to examine or
10 investigate the books and records of a licensee under this
11 section at a location outside of New Mexico, the licensee shall
12 be liable for and shall pay to the division within thirty days
13 of the presentation of an itemized statement the actual travel
14 and reasonable living expenses incurred on account of its
15 examination, supervision and regulation or shall pay a
16 reasonable per diem rate approved by the director.

17 SECTION 20. [NEW MATERIAL] ENFORCEMENT BY DIRECTOR.--

18 A. To ensure the effective supervision and
19 enforcement of the Student Loan Bill of Rights Act and in
20 accordance with the procedures provided in the Uniform
21 Licensing Act, the director may:

- 22 (1) deny, suspend, revoke or decline to renew
23 a license for a violation of the Student Loan Bill of Rights
24 Act, rules issued pursuant to that act or an order or directive
25 entered pursuant to that act;

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1 (2) deny, suspend, revoke or decline to renew
2 a license if an applicant or student loan servicer fails at any
3 time to meet the requirements of Subsection F of Section 4 of
4 the Student Loan Bill of Rights Act; and

5 (3) issue orders or directives as follows:

6 (a) order or direct student loan
7 servicers or private education lenders to cease and desist from
8 conducting business related to student education loans,
9 including issuing an immediate temporary order to cease and
10 desist;

11 (b) order or direct student loan
12 servicers or private education lenders to cease any violations
13 of the Student Loan Bill of Rights Act; and

14 (c) enter immediate temporary orders to
15 cease any business licensed pursuant to the Student Loan Bill
16 of Rights Act if the director determines that the license was
17 erroneously granted or the licensed student loan servicer is
18 currently in violation of that act.

19 B. The director may impose an administrative
20 penalty on a student loan servicer if the director finds, from
21 the record after notice and opportunity for a recorded hearing,
22 that the student loan servicer has violated or failed to comply
23 with any requirement of the Student Loan Bill of Rights Act or
24 any rule promulgated by the director pursuant to that act or
25 any order issued pursuant to that act. The maximum amount of
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1 penalty for each act or omission shall be five thousand dollars
2 (\$5,000).

3 SECTION 21. [NEW MATERIAL] JUDICIAL ENFORCEMENT.--

4 A. Upon a showing by the director that a person has
5 violated, or is about to violate, the Student Loan Bill of
6 Rights Act or any rule or order of the director pursuant to
7 that act, the district court of the first judicial district or
8 other appropriate district court in the state may grant or
9 impose one or more of the following:

10 (1) a temporary restraining order, permanent
11 or temporary prohibitory or mandatory injunction or a writ of
12 prohibition or mandamus;

13 (2) a civil penalty up to a maximum of five
14 thousand dollars (\$5,000) for each violation;

15 (3) declaratory judgment;

16 (4) restitution to student loan borrowers or
17 cosigners;

18 (5) recovery by the director of all costs and
19 expenses for conducting an investigation or the bringing of any
20 enforcement action pursuant to the Student Loan Bill of Rights
21 Act; or

22 (6) other relief as the court deems proper.

23 B. In determining the appropriate relief, the court
24 shall consider administrative enforcement actions taken and
25 imposed by the director pursuant to the Student Loan Bill of

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1 Rights Act in connection with the transactions constituting
2 violations of that act.

3 C. The court shall not require the director to post
4 bond in an action pursuant to this section.

5 SECTION 22. [NEW MATERIAL] COMPLIANCE WITH FEDERAL LAW.--

6 A. A student loan servicer licensee shall comply
7 with all applicable federal laws and regulations relating to
8 student loan servicing. In addition to any other remedies
9 provided by law, a violation of an applicable federal law or
10 regulation is a violation of the Student Loan Bill of Rights
11 Act.

12 B. A private education lender shall comply with all
13 applicable federal laws and regulations relating to the lending
14 of servicing of private education loans. In addition to any
15 other remedies provided by law, a violation of an applicable
16 federal law or regulation is a violation of the Student Loan
17 Bill of Rights Act.

18 SECTION 23. [NEW MATERIAL] PROMULGATION OF RULES.--The
19 director may promulgate rules and make reasonable orders
20 necessary to implement the Student Loan Bill of Rights Act. A
21 copy of every rule and of every order containing requirements
22 of general application shall be mailed to each licensee not
23 less than fifteen days before the effective date of the rule or
24 order.

25 SECTION 24. [NEW MATERIAL] STUDENT LOAN OMBUDSMAN--

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1 DUTIES--ANNUAL REPORT.--

2 A. The director shall designate a student loan
3 ombudsman within the division to provide timely assistance to
4 student loan borrowers.

5 B. The student loan ombudsman, in collaboration
6 with the office of the attorney general and the higher
7 education department, shall:

8 (1) receive, review and attempt to resolve
9 complaints from student loan borrowers;

10 (2) compile and analyze data regarding student
11 loan borrower complaints received by the ombudsman;

12 (3) assist student loan borrowers and
13 cosigners in understanding their rights and responsibilities
14 under the terms of student education loans;

15 (4) provide information to the public, state
16 agencies, state legislators and others regarding the problems
17 and concerns of student loan borrowers and make recommendations
18 for resolving those problems and concerns;

19 (5) analyze and monitor the development and
20 implementation of federal laws, regulations and policies and
21 state laws, rules and policies relating to student loan
22 borrowers and make recommendations for any changes the
23 ombudsman deems necessary;

24 (6) review the complete student education loan
25 history for any student loan borrower who has provided written

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1 consent for that review;

2 (7) disseminate information concerning the
3 availability of the student loan ombudsman to assist student
4 loan borrowers, cosigners, potential student loan borrowers,
5 potential cosigners, post-secondary educational institutions,
6 student loan servicers and other participants in student
7 education loan lending with student loan servicing concerns;
8 and

9 (8) take any other action the ombudsman deems
10 necessary to fulfill the duties of the student loan ombudsman.

11 C. The division, including the student loan
12 ombudsman, the office of the attorney general and the higher
13 education department, or their designees, shall meet at least
14 once per quarter to coordinate their efforts under Subsection B
15 of this section.

16 D. On or before July 1, 2024, the student loan
17 ombudsman, in collaboration with the office of attorney general
18 and the higher education department, shall establish and
19 maintain a student loan borrower education course that includes
20 educational presentations and materials regarding student
21 education loans. The student loan borrower education course
22 shall review key loan terms, documentation requirements,
23 monthly payment obligations, income-based repayment options,
24 loan forgiveness and disclosure requirements.

25 E. On or before December 1, 2025, and annually

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1 thereafter, the director shall submit a report to the
2 appropriate legislative interim committee. Annual reports
3 shall be made available to interested parties and the general
4 public and published on the division's website and on the
5 sunshine portal. Consistent with state law, the report shall
6 include, at a minimum, non-identifying consumer data from the
7 preceding calendar year, including the following information:

8 (1) for each licensee:

9 (a) the number of loans the licensee is
10 servicing in New Mexico and the total outstanding balance;

11 (b) the number of loans, percentage of
12 all loans and the total outstanding balance of all loans that
13 the licensee is servicing that are currently in default;

14 (c) the number, percentage of all loans
15 and the total outstanding balance of all loans that the
16 licensee is servicing that are more than sixty days delinquent;

17 (d) the number, percentage of all loans
18 and the total outstanding balance of all loans that the
19 licensee is servicing that have been paid off; and

20 (e) the number, percentage of all loans
21 and the total outstanding balance of all loans the licensee is
22 servicing that have been forgiven or discharged;

23 (2) information regarding the implementation
24 of the Student Loan Bill of Rights Act;

25 (3) the overall effectiveness of the student

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1 loan ombudsman position, including information, in the
2 aggregate, regarding the number and categories of student loan
3 borrower and cosigner complaints filed with the division and
4 the office of the attorney general;

5 (4) the number of student loan borrower and
6 cosigner complaints investigated and resolved by the division
7 and the office of the attorney general; and

8 (5) any recommendations pertaining to the
9 division's regulation of student loan servicers and private
10 education lenders and the enforcement of the provisions of the
11 Student Loan Bill of Rights Act.

12 SECTION 25. [NEW MATERIAL] INFORMATION SHARING.--By July
13 31, 2024, the division, the student loan ombudsman, the office
14 of the attorney general and the higher education department
15 shall enter into an agreement to allow for the sharing of all
16 necessary information.

17 SECTION 26. [NEW MATERIAL] PRIVATE ACTION.--

18 A. A person who suffers damage as a result of the
19 failure of a student loan servicer or private education lender
20 to comply with a provision of the Student Loan Bill of Rights
21 Act may bring an action in district court against that student
22 loan servicer or private education lender to recover any of the
23 following:

24 (1) actual damages, but in no case shall the
25 total award of damages be less than five hundred dollars (\$500)

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1 per violation;

2 (2) an order enjoining the methods, acts or
3 practices causing the compliance failure;

4 (3) restitution of property;

5 (4) punitive damages;

6 (5) attorney fees; and

7 (6) other relief the court deems proper.

8 B. In addition to any other remedies provided by
9 this section or otherwise provided by law, whenever it is
10 proven by a preponderance of the evidence that a student loan
11 servicer or private education lender has engaged in conduct
12 that substantially interferes with a student loan borrower's
13 right to an alternative payment arrangement; loan forgiveness,
14 cancellation or discharge; or any other financial benefit as
15 established under the terms of a borrower's promissory note or
16 under the federal Higher Education Act of 1965, and the
17 regulations promulgated pursuant to that act, the court shall
18 award treble actual damages to the plaintiff, but in no case
19 shall the award of damages be less than one thousand five
20 hundred dollars (\$1,500) per violation.

21 C. The remedies provided in the Student Loan Bill
22 of Rights Act are not intended to be the exclusive remedies
23 available to a person suffering damage due to the non-
24 compliance of a student loan servicer or private education
25 lender, and the person shall not be required to exhaust

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1 administrative remedies established pursuant to the Student
2 Loan Bill of Rights Act or any other applicable law prior to
3 bringing a private right of action.

4 SECTION 27. [NEW MATERIAL] STUDENT LOAN BILL OF RIGHTS
5 FUND--CREATED--PURPOSE--APPROPRIATION.--

6 A. The "student loan bill of rights fund" is
7 created as a nonreverting fund in the state treasury and shall
8 be administered by the division. The fund consists of fees
9 collected by the division pursuant to the Student Loan Bill of
10 Rights Act and money that is appropriated or donated or that
11 otherwise accrues to the fund. Income from investment of the
12 fund shall be credited to the fund.

13 B. Money in the student loan bill of rights fund is
14 appropriated to the division to carry out the provisions of the
15 Student Loan Bill of Rights Act.

16 C. Expenditures from the fund shall be made on
17 warrants drawn by the secretary of finance and administration
18 pursuant to vouchers signed by the director or the director's
19 authorized representative.

20 SECTION 28. Section 57-12-2 NMSA 1978 (being Laws 1967,
21 Chapter 268, Section 2, as amended) is amended to read:

22 "57-12-2. DEFINITIONS.--As used in the Unfair Practices
23 Act:

24 A. "person" means, where applicable, natural
25 persons, corporations, trusts, partnerships, associations,

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1 cooperative associations, clubs, companies, firms, joint
2 ventures or syndicates;

3 B. "seller-initiated telephone sale" means a sale,
4 lease or rental of goods or services in which the seller or the
5 seller's representative solicits the sale by telephoning the
6 prospective purchaser and in which the sale is consummated
7 entirely by telephone or mail, but does not include a
8 transaction:

9 (1) in which a person solicits a sale from a
10 prospective purchaser who has previously made an authorized
11 purchase from the seller's business; or

12 (2) in which the purchaser is accorded the
13 right of rescission by the provisions of the federal Consumer
14 Credit Protection Act, 15 U.S.C. 1635, or regulations issued
15 pursuant thereto;

16 C. "trade" or "commerce" includes the advertising,
17 offering for sale or distribution of any services and any
18 property and any other article, commodity or thing of value,
19 including any trade or commerce directly or indirectly
20 affecting the people of this state;

21 D. "unfair or deceptive trade practice" means an
22 act specifically declared unlawful pursuant to the Unfair
23 Practices Act, a false or misleading oral or written statement,
24 visual description or other representation of any kind
25 knowingly made in connection with the sale, lease, rental or

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1 loan of goods or services or in the extension of credit or in
2 the collection of debts by a person in the regular course of
3 the person's trade or commerce, that may, tends to or does
4 deceive or mislead any person and includes:

5 (1) representing goods or services as those of
6 another when the goods or services are not the goods or
7 services of another;

8 (2) causing confusion or misunderstanding as
9 to the source, sponsorship, approval or certification of goods
10 or services;

11 (3) causing confusion or misunderstanding as
12 to affiliation, connection or association with or certification
13 by another;

14 (4) using deceptive representations or
15 designations of geographic origin in connection with goods or
16 services;

17 (5) representing that goods or services have
18 sponsorship, approval, characteristics, ingredients, uses,
19 benefits or quantities that they do not have or that a person
20 has a sponsorship, approval, status, affiliation or connection
21 that the person does not have;

22 (6) representing that goods are original or
23 new if they are deteriorated, altered, reconditioned,
24 reclaimed, used or secondhand;

25 (7) representing that goods or services are of

1 a particular standard, quality or grade or that goods are of a
2 particular style or model if they are of another;

3 (8) disparaging the goods, services or
4 business of another by false or misleading representations;

5 (9) offering goods or services with intent not
6 to supply them in the quantity requested by the prospective
7 buyer to the extent of the stock available, unless the
8 purchaser is purchasing for resale;

9 (10) offering goods or services with intent
10 not to supply reasonable expectable public demand;

11 (11) making false or misleading statements of
12 fact concerning the price of goods or services, the prices of
13 competitors or one's own price at a past or future time or the
14 reasons for, existence of or amounts of price reduction;

15 (12) making false or misleading statements of
16 fact for the purpose of obtaining appointments for the
17 demonstration, exhibition or other sales presentation of goods
18 or services;

19 (13) packaging goods for sale in a container
20 that bears a trademark or trade name identified with goods
21 formerly packaged in the container, without authorization,
22 unless the container is labeled or marked to disclaim a
23 connection between the contents and the trademark or trade
24 name;

25 (14) using exaggeration, innuendo or ambiguity

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1 as to a material fact or failing to state a material fact if
2 doing so deceives or tends to deceive;

3 (15) stating that a transaction involves
4 rights, remedies or obligations that it does not involve;

5 (16) stating that services, replacements or
6 repairs are needed if they are not needed;

7 (17) failing to deliver the quality or
8 quantity of goods or services contracted for;

9 (18) violating the Tobacco Escrow Fund Act;
10 [~~or~~]

11 (19) offering or providing unposted or
12 unadvertised pricing or service based on the buyer's gender or
13 perceived gender identity; provided, however, that this
14 provision does not apply to persons regulated by the office of
15 superintendent of insurance pursuant to the New Mexico
16 Insurance Code; or

17 (20) violating Section 10 or 17 of the Student
18 Loan Bill of Rights Act; and

19 E. "unconscionable trade practice" means an act or
20 practice in connection with the sale, lease, rental or loan, or
21 in connection with the offering for sale, lease, rental or
22 loan, of any goods or services, including services provided by
23 licensed professionals, or in the extension of credit or in the
24 collection of debts that to a person's detriment:

25 (1) takes advantage of the lack of knowledge,

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1 ability, experience or capacity of a person to a grossly unfair
2 degree; ~~[or]~~

3 (2) results in a gross disparity between the
4 value received by a person and the price paid; or

5 (3) violates Section 10 or 17 of the Student
6 Loan Bill of Rights Act."

7 SECTION 29. APPLICABILITY.--The provisions of Section 11
8 of this act apply to private education loans issued on or after
9 January 1, 2024.

10 SECTION 30. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is January 1, 2024.