

1 SENATE BILL 164

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Katy Duhigg

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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 OMBUDSMAN; DEFINING CERTAIN
23 VIOLATIONS OF THE STUDENT BILL OF RIGHTS AS UNFAIR AND
24 UNCONSCIONABLE TRADE PRACTICES; CREATING A PRIVATE RIGHT OF
25 ACTION; PROVIDING PENALTIES; CREATING THE STUDENT LOAN BILL OF

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1 RIGHTS FUND; MAKING AN APPROPRIATION.

2

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" shall 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

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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 a loan primarily
7 for personal use to finance a student loan borrower's post-
8 secondary education expenses, but does not include an isolated
9 personal loan made by an individual to another for post-
10 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 excepted from Paragraphs (1) through (3) of
2 Subsection A, Subsection B and Subsection F of Section 4 of the
3 Student Loan Bill of Rights Act. A person licensed pursuant to
4 this section shall comply with the record retention
5 requirements in Section 8 of the Student Loan Bill of Rights
6 Act except to the extent that the requirements are inconsistent
7 with federal law.

8 D. A person issued a license pursuant to this
9 section shall provide the director with written notice within
10 seven days following notification of the expiration, revocation
11 or termination of a contract awarded by the United States
12 secretary of education pursuant to 20 U.S.C. Section 1087f.
13 The person has thirty days following notification to satisfy
14 all requirements established under Subsection F of Section 4 of
15 the Student Loan Bill of Rights Act in order to continue to act
16 as a student loan servicer. At the expiration of the thirty-
17 day period if the requirements have not been satisfied, the
18 director shall immediately suspend a license granted to the
19 person pursuant to this section.

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

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1 or violating applicable law.

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

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

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

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1 Act.

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

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

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1 hearing on that action pursuant to the Uniform Licensing Act.

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

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

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

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

24 A. A licensed student loan servicer shall not
25 service student education loans under a name or at a place of

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

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

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

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

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

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1 SECTION 9. [NEW MATERIAL] STUDENT LOAN SERVICERS.--Except
2 as otherwise provided in federal law, a federal student
3 education loan agreement or a contract between the federal
4 government and a student loan servicer, a student loan servicer
5 shall comply with the following requirements:

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

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

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

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

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1 directions. For purposes of this subsection, "overpayment" or
2 "prepayment" means a payment on a student education loan in
3 excess of the monthly amount due from a borrower on a student
4 education loan;

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

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

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

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

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

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1 including the repayment status of the student loan borrower and
2 any benefits associated with the student education loan of the
3 student loan borrower;

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

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

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

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

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

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

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

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

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

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

14 A. A student loan servicer shall not:

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

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

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1 (3) engage in abusive acts or practices when
2 servicing a student education loan. An abusive act or practice
3 includes:

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

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

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

19 (5) knowingly misapply or recklessly apply
20 student education loan payments to the outstanding balance of a
21 student education loan;

22 (6) knowingly or recklessly provide inaccurate
23 information to a credit bureau;

24 (7) fail to report a favorable or unfavorable
25 payment history of a student loan borrower to a nationally

1 recognized consumer credit bureau at least annually if the
2 student loan servicer regularly reports information to a credit
3 bureau;

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

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

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

24 (11) fail to respond within fifteen days to
25 communication from the student loan ombudsman, or within a

1 shorter reasonable time as the student loan ombudsman may
2 request in the communication; or

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

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

13 C. A student loan servicer that commits an act
14 prohibited by this section with respect to a student loan
15 borrower is liable in an amount equal to the sum of:

16 (1) any actual damages sustained by the
17 borrower as a result of the failure;

18 (2) a monetary award to the borrower equal to
19 three times the total amount the student loan servicer
20 collected from the borrower;

21 (3) punitive damages as the court may allow;
22 and

23 (4) in the case of a successful action by the
24 borrower to enforce the liability set out in this subsection,
25 the costs of the action, together with reasonable attorney fees

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1 as determined by the court.

2 D. The remedies provided in this section are not
3 the exclusive remedies available to a student loan borrower,
4 nor must the borrower exhaust any administrative remedies
5 provided in this section or any other applicable law before
6 proceeding pursuant to this section.

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

8 A. A private education lender or student loan
9 servicer acting on behalf of a private education lender, when
10 notified of the total and permanent disability of a student
11 loan borrower or cosigner, shall release any cosigner from the
12 obligations under a private education loan. The lender shall
13 not attempt to collect a payment from a cosigner upon notice of
14 total and permanent disability of the cosigner or borrower.

15 B. A lender shall notify a student loan borrower
16 and cosigner for a private education loan if either the
17 cosigner or borrower is released from the obligations of the
18 private education loan under this section within thirty days of
19 the release.

20 C. Any lender that extends a private education loan
21 shall provide the student loan borrower an option to designate
22 an individual to have the legal authority to act on behalf of
23 the borrower with respect to the private education loan in the
24 event of the total and permanent disability of the borrower.

25 D. In the event a cosigner is released from the

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1 obligations of a private education loan pursuant to Subsection
2 A of this section, the lender shall not require the student
3 loan borrower to obtain another cosigner on the loan
4 obligation.

5 E. A lender shall not declare a default or
6 accelerate the debt against the student loan borrower on the
7 sole basis of the release of the cosigner from the loan
8 obligation.

9 F. A lender shall, when notified of the total and
10 permanent disability of a student loan borrower, discharge the
11 liability of the borrower and cosigner on the loan.

12 G. After receiving a notification described in
13 Subsection F of this section, the lender shall not attempt to
14 collect on the outstanding liability of the student loan
15 borrower or cosigner or monitor the disability status of the
16 borrower at any point after the date of discharge.

17 SECTION 12. [NEW MATERIAL] AVAILABILITY OF ALTERNATIVE
18 REPAYMENT OPTIONS.--

19 A. If a private education lender offers any student
20 loan borrower flexible or modified repayment options in
21 connection with a private education loan, those flexible
22 repayment options shall be made available to all borrowers of
23 loans by the lender. A lender shall:

24 (1) provide on its website a description of
25 any alternative repayment options offered by the lender for

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1 private education loans; and

2 (2) establish policies and procedures and
3 implement them consistently in order to facilitate evaluation
4 of private education loan flexible repayment option requests,
5 including providing accurate information regarding any private
6 education loan alternative repayment options that may be
7 available to the student loan borrower through the promissory
8 note or that may have been marketed to the borrower through
9 marketing materials.

10 B. A private education lender or a student loan
11 servicer acting on behalf of a private education lender shall
12 consistently present and offer flexible or modified private
13 education loan repayment options to student loan borrowers with
14 similar financial circumstances if the lender offers such
15 repayment options.

16 SECTION 13. [NEW MATERIAL] NOTICES REQUIRED AT
17 ORIGINATION.--

18 A. Prior to the extension of a private education
19 loan that requires a cosigner, a private education lender shall
20 deliver the following information to the cosigner:

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

23 (2) how the cosigner shall be notified if the
24 private education loan becomes delinquent, including how the
25 cosigner can cure the delinquency in order to avoid negative

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1 credit furnishing and loss of cosigner release eligibility; and
2 (3) eligibility for release of the cosigner's
3 obligation on the private education loan, including the number
4 of on-time payments and any other criteria required to approve
5 the release of the cosigner from the loan obligation.

6 B. Prior to offering a person a private education
7 loan that is being used to refinance an existing education
8 loan, a private education lender shall provide the person a
9 disclosure that benefits and protections applicable to the
10 existing loan may be lost due to the refinancing.

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

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

17 A. For any private education loan that obligates a
18 cosigner, a lender shall provide the student loan borrower and
19 the cosigner an annual written notice containing information
20 about cosigner release, including the administrative,
21 non-judgmental criteria the lender requires to approve the
22 release of the cosigner from the loan obligation and the
23 process for applying for cosigner release.

24 B. If the student loan borrower has met the
25 applicable payment requirement to be eligible for cosigner

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1 release, the lender shall send the borrower and the cosigner a
2 written notification by mail and by electronic mail, where a
3 borrower or cosigner has elected to receive electronic
4 communications from the lender, informing the borrower and
5 cosigner that the payment requirement to be eligible for
6 cosigner release has been met. The notification shall also
7 include information about any additional criteria to qualify
8 for cosigner release and the procedure to apply for cosigner
9 release.

10 C. A lender shall provide written notice to a
11 student loan borrower who applies for cosigner release but
12 whose application is incomplete. The written notice shall
13 include a description of the information needed to consider the
14 application complete and the date by which the applicant shall
15 furnish the missing information.

16 D. Within thirty days after a student loan borrower
17 submits a completed application for cosigner release, the
18 lender shall send the borrower and cosigner a written notice
19 that informs the borrower and cosigner whether the cosigner
20 release application has been approved or denied. If the lender
21 denies a request for cosigner release, the student loan
22 borrower may request any documents or information used in the
23 determination, including the credit score threshold used by the
24 lender, the borrower's consumer report, the borrower's credit
25 score and any other documents specific to the borrower. The

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1 lender shall also provide any adverse action notices required
2 under applicable federal law if the denial is based in whole or
3 in part on any information contained in a consumer report.

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

7 F. A lender shall not impose any restriction that
8 permanently bars a student loan borrower from qualifying for
9 cosigner release, including restricting the number of times a
10 borrower may apply for cosigner release.

11 G. A lender shall not impose any negative
12 consequences on any student loan borrower or cosigner during
13 the sixty days following the issuance of the notice required
14 pursuant to Subsection C of this section, or until the lender
15 makes a final determination about a borrower's cosigner release
16 application. For the purpose of this subsection, "negative
17 consequences" includes the imposition of additional eligibility
18 criteria, negative credit reporting, lost eligibility for
19 cosigner release, late fees, interest capitalization or other
20 financial injury.

21 H. A lender shall not require more than twelve
22 consecutive on-time payments as criteria for cosigner release.
23 Any student loan borrower who has paid the equivalent of twelve
24 months of principal and interest payments within any twelve-
25 month period shall be considered to have satisfied the

.219123.2

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1 consecutive on-time payment requirement, even if the borrower
2 has not made payments monthly during the twelve-month period.

3 I. If a student loan borrower or cosigner requests
4 a change in terms that restarts the count of consecutive
5 on-time payments required for cosigner release, the lender
6 shall notify the borrower and cosigner in writing of the impact
7 of the change and provide the borrower or cosigner the right to
8 withdraw or reverse the request to avoid that impact.

9 J. A student loan borrower shall have the right to
10 request an appeal of a lender's determination to deny a request
11 for cosigner release, and the lender shall permit the borrower
12 to submit additional documentation evidencing the borrower's
13 ability, willingness and stability to meet the payment
14 obligations. The student loan borrower may request review of
15 the cosigner release determination by another employee.

16 K. A lender shall establish and maintain a
17 comprehensive record management system reasonably designed to
18 ensure the accuracy, integrity and completeness of data and
19 other information about cosigner release applications and to
20 ensure compliance with applicable state and federal laws,
21 including the federal Equal Credit Opportunity Act and the
22 federal Fair Credit Reporting Act. This system shall include
23 the number of cosigner release applications received, the
24 approval and denial rate and the primary reasons for any
25 denial.

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1 SECTION 15. ~~[NEW MATERIAL]~~ INFORMATION AVAILABLE TO
2 COSIGNERS.--

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

6 B. If a lender provides electronic access to
7 documents and records for a student loan borrower, the lender
8 shall provide equivalent electronic access to the cosigner.

9 C. Upon written notice from the student loan
10 borrower or cosigner, the lender shall redact or withhold
11 contact information for the borrower and cosigner.

12 SECTION 16. ~~[NEW MATERIAL]~~ PROHIBITIONS ON THE
13 ACCELERATION OF PRIVATE EDUCATION LOANS.--

14 A. A private education loan executed on or after
15 the effective date of the Student Loan Bill of Rights Act shall
16 not include a provision that permits the private education
17 lender to accelerate, in whole or in part, payments on the
18 private education loan, except in cases of payment default. A
19 lender shall not place any loan or account into default or
20 accelerate a loan for any reason, other than for payment
21 default.

22 B. A private education loan executed prior to the
23 effective date of the Student Loan Bill of Rights Act shall
24 permit the lender to accelerate payments only if the promissory
25 note or loan agreement explicitly authorizes an acceleration

.219123.2

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1 and only for the reasons stated in the note or agreement.

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

5 D. Upon receiving notification of the death or
6 bankruptcy of a cosigner, when the private education loan is
7 not more than sixty days delinquent at the time of the
8 notification, the lender shall not change any terms or benefits
9 under the promissory note, repayment schedule, repayment terms
10 or monthly payment amount or any other provision associated
11 with the private education loan.

12 E. A lender shall not place any private loan or
13 account into default or accelerate a private loan while a
14 borrower is seeking a private loan modification or enrollment
15 in a flexible repayment plan, except that a lender may place a
16 private loan or account into default or accelerate a private
17 loan for payment default ninety days following the student loan
18 borrower's default.

19 SECTION 17. [NEW MATERIAL] PRIVATE EDUCATION LENDERS--
20 PROHIBITED ACTS.--

21 A. A private education lender shall not:

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

25 (2) make a private education loan upon

.219123.2

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1 security of any assignment of or order for the payment of any
2 salary, wages, commissions or other compensation for services
3 earned or to be earned. No assignment or order shall be taken
4 by a lender in connection with a private education loan, or for
5 the enforcement or repayment thereof, and any assignment or
6 order taken or given to secure any loan made by any lender
7 under the Student Loan Bill of Rights Act shall be void;

8 (3) directly or indirectly employ a scheme,
9 device or artifice to defraud or mislead a student loan
10 borrower or cosigner;

11 (4) engage in an unfair or deceptive trade
12 practice or unconscionable trade practice toward a person or
13 misrepresent or omit material information in connection with
14 the lending or servicing of a private education loan, including
15 misrepresenting the amount, nature or terms of a fee or payment
16 due or claimed to be due on a private education loan, the terms
17 and conditions of the loan agreement or the student loan
18 borrower's or cosigner's obligations under the loan;

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

22 (a) material interference with the
23 ability of a student loan borrower or cosigner to understand a
24 term or condition of a private education loan; or

25 (b) taking unreasonable advantage of any

1 of the following: a lack of understanding on the part of a
2 student loan borrower or cosigner of the material risks, costs
3 or conditions of the private education loan; the inability of a
4 student loan borrower or cosigner to protect the borrower's or
5 cosigner's interests when selecting or using a private
6 education loan or a feature, term or condition of a private
7 education loan; or the reasonable reliance by the student loan
8 borrower or cosigner on a person engaged in lending or
9 servicing a private education loan to act in the interests of
10 the borrower or cosigner;

11 (6) obtain property by fraud or
12 misrepresentation;

13 (7) knowingly misapply or recklessly apply
14 private education loan payments to the outstanding balance of a
15 student education loan;

16 (8) knowingly or recklessly provide inaccurate
17 information to a credit bureau;

18 (9) fail to report a favorable or unfavorable
19 payment history of a student loan borrower or cosigner to a
20 nationally recognized consumer credit bureau at least annually
21 if the private education lender regularly reports information
22 to a credit bureau;

23 (10) refuse to communicate with an authorized
24 representative of a student loan borrower or cosigner who
25 provides a written authorization signed by the student loan

.219123.2

1 borrower; provided that the private education lender may adopt
2 procedures reasonably related to verifying that the
3 representative is authorized to act on behalf of the student
4 loan borrower;

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

10 (12) fail to respond within fifteen days to
11 communication from the student loan ombudsman, or within a
12 shorter reasonable time as the student loan ombudsman may
13 request in the communication; or

14 (13) fail to respond within fifteen days to a
15 student loan borrower or cosigner complaint submitted to the
16 lender by the student loan ombudsman. If necessary, a private
17 education lender may request additional time, up to forty-five
18 days, as long as the request is accompanied by an explanation
19 of why additional time is reasonable and necessary.

20 B. A violation of this section is an unfair or
21 deceptive trade practice and an unconscionable trade practice
22 pursuant to the Unfair Practices Act and is subject to the
23 enforcement and penalty provisions contained in that act.

24 C. A private education lender that commits an act
25 prohibited by this section with respect to a student loan

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1 borrower is liable in an amount equal to the sum of:

2 (1) any actual damages sustained by the
3 student loan borrower as a result of the failure;

4 (2) a monetary award to the student loan
5 borrower equal to three times the total amount the student loan
6 servicer collected, or sought to collect, from the borrower;

7 (3) punitive damages as the court may allow;
8 and

9 (4) in the case of a successful action by the
10 student loan borrower to enforce the liability set out in this
11 subsection, the costs of the action, together with reasonable
12 attorney fees as determined by the court.

13 D. The remedies provided in this section are not
14 the exclusive remedies available to a student loan borrower or
15 cosigner, nor must the borrower exhaust any administrative
16 remedies provided in this section or any other applicable law
17 before proceeding pursuant to this section.

18 SECTION 18. [NEW MATERIAL] POWERS OF THE DIRECTOR.--

19 A. The director may conduct investigations and
20 examinations for purposes of initial licensing, license
21 renewal, license suspension, license revocation or termination,
22 or for general or specific inquiry or investigation, to
23 determine compliance with the Student Loan Bill of Rights Act.
24 The director may access, receive and use any documents,
25 information or evidence the director deems relevant to the

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1 inquiry or investigation regardless of the location,
2 possession, control or custody of those documents or that
3 information or evidence.

4 B. For the purposes of investigating violations or
5 complaints arising pursuant to the Student Loan Bill of Rights
6 Act or for the purposes of examination, the director may
7 review, investigate or examine the activities of any private
8 education lender or student loan servicer as often as necessary
9 to carry out the purposes of that act. The director may
10 direct, subpoena or order the attendance of and examine under
11 oath a person whose testimony may be required about the student
12 education loan or the business or subject matter of the
13 examination or investigation and may direct, subpoena or order
14 the person to produce books, accounts, records, files and any
15 other documents the director deems relevant to the inquiry.

16 C. In making an examination or investigation
17 authorized by the Student Loan Bill of Rights Act, the director
18 may control access to any documents or records of the student
19 loan servicer licensee or person under examination or
20 investigation related to the student education loan. The
21 director may take possession of the documents and records or
22 place a person in exclusive charge of the documents and records
23 in the place where the documents and records are usually kept.
24 During the period of control, a person shall not remove or
25 attempt to remove any of the documents and records except

.219123.2

1 pursuant to a court order or with the consent of the director.
2 Unless the director has reasonable grounds to believe the
3 documents or records of the student loan servicer licensee or
4 person have been, or are at risk of being, altered or destroyed
5 for purposes of concealing a violation of the Student Loan Bill
6 of Rights Act, the student loan servicer licensee or owner of
7 the documents and records shall have access to the documents or
8 records as necessary to conduct its ordinary business affairs.
9 Nothing in this subsection shall be construed as limiting the
10 student loan borrower's access to the borrower's own account
11 records.

12 D. To fulfill the duties imposed by this section
13 and to carry out the purposes of this section, the director
14 may:

15 (1) retain attorneys, accountants or other
16 professionals and specialists as examiners, auditors or
17 investigators to conduct or assist in the conduct of
18 examinations or investigations;

19 (2) enter into agreements or relationships
20 with other government officials or regulatory associations to
21 improve efficiencies and reduce regulatory burden by sharing
22 resources, standardized or uniform methods or procedures and
23 documents, records, information or evidence obtained pursuant
24 to this section;

25 (3) use, hire, contract or employ public or

1 privately available analytical systems, methods or software to
2 examine or investigate the student loan servicer, private
3 education lender or person subject to the Student Loan Bill of
4 Rights Act;

5 (4) rely on examination or investigation
6 reports made by other government officials, whether in or
7 outside of New Mexico; and

8 (5) accept audit reports made by an
9 independent certified public accountant for the student loan
10 servicer, private education lender or person subject to the
11 Student Loan Bill of Rights Act in the course of that part of
12 the examination covering the same general subject matter as the
13 audit and may incorporate the audit report in the report of
14 examination, report of investigation or other writing of the
15 director.

16 E. A student loan servicer, private education
17 lender or person subject to investigation or examination under
18 this section shall not knowingly withhold, abstract, remove,
19 mutilate, destroy or secrete any books, records, computer
20 records or other information.

21 F. The costs of an investigation conducted by the
22 director shall be paid by the student loan servicer, private
23 education lender or person being investigated. When it becomes
24 necessary to examine or investigate the books and records of a
25 licensee under this section at a location outside of New

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1 Mexico, the licensee shall be liable for and shall pay to the
2 division within thirty days of the presentation of an itemized
3 statement the actual travel and reasonable living expenses
4 incurred on account of its examination, supervision and
5 regulation or shall pay a reasonable per diem rate approved by
6 the director.

7 SECTION 19. [NEW MATERIAL] ENFORCEMENT BY DIRECTOR.--

8 A. To ensure the effective supervision and
9 enforcement of the Student Loan Bill of Rights Act and in
10 accordance with the procedures provided in the Uniform
11 Licensing Act, the director may:

12 (1) deny, suspend, revoke or decline to renew
13 a license for a violation of the Student Loan Bill of Rights
14 Act, rules issued pursuant to that act or an order or directive
15 entered pursuant to that act;

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

20 (3) issue orders or directives as follows:

21 (a) order or direct student loan
22 servicers or private education lenders to cease and desist from
23 conducting business related to student education loans,
24 including issuing an immediate temporary order to cease and
25 desist;

.219123.2

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

4 (c) enter immediate temporary orders to
5 cease any business licensed pursuant to the Student Loan Bill
6 of Rights Act if the director determines that the license was
7 erroneously granted or the licensed student loan servicer is
8 currently in violation of that act.

9 B. The director may impose an administrative
10 penalty on a student loan servicer if the director finds, from
11 the record after notice and opportunity for a recorded hearing,
12 that the student loan servicer has violated or failed to comply
13 with any requirement of the Student Loan Bill of Rights Act or
14 any rule promulgated by the director pursuant to that act or
15 any order issued pursuant to that act. The maximum amount of
16 penalty for each act or omission shall be five thousand dollars
17 (\$5,000).

18 SECTION 20. [NEW MATERIAL] JUDICIAL ENFORCEMENT.--

19 A. Upon a showing by the director that a person has
20 violated, or is about to violate, the Student Loan Bill of
21 Rights Act or any rule or order of the director pursuant to
22 that act, the district court of the first judicial district or
23 other appropriate district court in the state may grant or
24 impose one or more of the following:

25 (1) a temporary restraining order, permanent

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1 or temporary prohibitory or mandatory injunction or a writ of
2 prohibition or mandamus;

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

5 (3) declaratory judgment;

6 (4) restitution to student loan borrowers or
7 cosigners;

8 (5) recovery by the director of all costs and
9 expenses for conducting an investigation or the bringing of any
10 enforcement action pursuant to the Student Loan Bill of Rights
11 Act; or

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

13 B. In determining the appropriate relief, the court
14 shall consider administrative enforcement actions taken and
15 imposed by the director pursuant to the Student Loan Bill of
16 Rights Act in connection with the transactions constituting
17 violations of that act.

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

20 SECTION 21. [NEW MATERIAL] CRIMINAL PENALTIES.--

21 A. An individual who acts as a student loan
22 servicer without being properly licensed pursuant to the
23 Student Loan Bill of Rights Act is, for a first offense, guilty
24 of a misdemeanor and upon conviction shall be sentenced in
25 accordance with the provisions of Subsection A of Section

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1 31-19-1 NMSA 1978.

2 B. In the case of a conviction pursuant to
3 Subsection A of this section, the court may impose a deferred
4 sentence in accordance with Section 31-20-6 NMSA 1978.

5 C. An individual who violates Subsection A of this
6 section is, for a second or subsequent offense, guilty of a
7 fourth degree felony and upon conviction shall be sentenced in
8 accordance with the provisions of Section 31-18-15 NMSA 1978.

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

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

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

22 SECTION 23. [NEW MATERIAL] PROMULGATION OF RULES.--The
23 director may promulgate rules and make reasonable orders
24 necessary to implement the Student Loan Bill of Rights Act. A
25 copy of every rule and of every order containing requirements

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1 of general application shall be mailed to each licensee not
2 less than fifteen days before the effective date of the rule or
3 order.

4 SECTION 24. [NEW MATERIAL] STUDENT LOAN OMBUDSMAN--
5 DUTIES--ANNUAL REPORT.--

6 A. The director shall designate a student loan
7 ombudsman within the division to provide timely assistance to
8 student loan borrowers.

9 B. The student loan ombudsman, in collaboration
10 with the office of the attorney general and the higher
11 education department, shall:

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

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

16 (3) assist student loan borrowers and
17 cosigners in understanding their rights and responsibilities
18 under the terms of student education loans;

19 (4) provide information to the public, state
20 agencies, state legislators and others regarding the problems
21 and concerns of student loan borrowers and make recommendations
22 for resolving those problems and concerns;

23 (5) analyze and monitor the development and
24 implementation of federal laws, regulations and policies and
25 state laws, rules and policies relating to student loan

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1 borrowers and make recommendations for any changes the
2 ombudsman deems necessary;

3 (6) review the complete student education loan
4 history for any student loan borrower who has provided written
5 consent for that review;

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

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

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

20 D. On or before July 1, 2022, the student loan
21 ombudsman, in collaboration with the office of attorney general
22 and the higher education department, shall establish and
23 maintain a student loan borrower education course that includes
24 educational presentations and materials regarding student
25 education loans. The student loan borrower education course

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1 shall review key loan terms, documentation requirements,
2 monthly payment obligations, income-based repayment options,
3 loan forgiveness and disclosure requirements.

4 E. On or before December 1, 2023, and annually
5 thereafter, the director shall submit a report to the
6 appropriate legislative interim committee. Annual reports
7 shall be made available to interested parties and the general
8 public and published on the division's website and on the
9 sunshine portal. Consistent with state law, the report shall
10 include, at a minimum, non-identifying consumer data from the
11 preceding calendar year, including the following information:

12 (1) for each licensee:

13 (a) the number of loans the licensee is
14 servicing in New Mexico;

15 (b) the number of loans and percentage
16 of all loans that the licensee is servicing that are currently
17 in default;

18 (c) the number and percentage of all
19 loans that the licensee is servicing that are more than sixty
20 days delinquent;

21 (d) the number and percentage of all
22 loans that the licensee is servicing that have been paid off;
23 and

24 (e) the number and percentage of all
25 loans the licensee is servicing that have been forgiven or

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1 discharged;

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

4 (3) the overall effectiveness of the student
5 loan ombudsman position, including information, in the
6 aggregate, regarding the number and categories of student loan
7 borrower and cosigner complaints filed with the division and
8 the office of the attorney general;

9 (4) the number of student loan borrower and
10 cosigner complaints investigated and resolved by the division
11 and the office of the attorney general; and

12 (5) any recommendations pertaining to the
13 division's regulation of student loan servicers and private
14 education lenders and the enforcement of the provisions of the
15 Student Loan Bill of Rights Act.

16 SECTION 25. [NEW MATERIAL] INFORMATION SHARING.--By July
17 31, 2022, the division, the student loan ombudsman, the office
18 of the attorney general and the higher education department
19 shall enter into an agreement to allow for the sharing of all
20 necessary information.

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

22 A. A person who suffers damage as a result of the
23 failure of a student loan servicer to comply with a provision
24 of the Student Loan Bill of Rights Act may bring an action in
25 district court against that student loan servicer to recover

.219123.2

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1 any of the following:

2 (1) actual damages, but in no case shall the
3 total award of damages be less than five hundred dollars (\$500)
4 per violation;

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

7 (3) restitution of property;

8 (4) punitive damages;

9 (5) attorney fees; and

10 (6) other relief the court deems proper.

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

23 C. The remedies provided in the Student Loan Bill
24 of Rights Act are not intended to be the exclusive remedies
25 available to a person suffering damage due to the non-

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1 compliance of a student loan servicer, and the person shall not
2 be required to exhaust administrative remedies established
3 pursuant to the Student Loan Bill of Rights Act or any other
4 applicable law prior to bringing a private right of action.

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

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

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

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

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

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

25 A. "person" means, where applicable, natural

.219123.2

1 persons, corporations, trusts, partnerships, associations,
2 cooperative associations, clubs, companies, firms, joint
3 ventures or syndicates;

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

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

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

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

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

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

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

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

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

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

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

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

.219123.2

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1 (7) representing that goods or services are of
2 a particular standard, quality or grade or that goods are of a
3 particular style or model if they are of another;

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

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

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

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

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

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

.219123.2

1 (14) using exaggeration, innuendo or ambiguity
2 as to a material fact or failing to state a material fact if
3 doing so deceives or tends to deceive;

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

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

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

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

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

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

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

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1 (1) takes advantage of the lack of knowledge,
2 ability, experience or capacity of a person to a grossly unfair
3 degree; [~~or~~]

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

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

8 SECTION 29. APPLICABILITY.--The provisions of Section 11
9 of this act apply to private education loans issued on or after
10 January 1, 2022.

11 SECTION 30. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is January 1, 2022.