

HOUSE BILL 224

**57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

INTRODUCED BY

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and Dayan Hochman-Vigil

AN ACT

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

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1 PROVIDING FOR JUDICIAL ENFORCEMENT; PROVIDING PENALTIES; MAKING  
2 AN APPROPRIATION.

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

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

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

10 A. "cosigner":

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

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

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

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

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

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1           D. "person" includes legal representatives,  
2           unincorporated organizations, trustees, fiduciaries and public  
3           entities;

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

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

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

23          G. "private education loan":

24                   (1) means an extension of credit that is not  
25                   made, insured or guaranteed under Title 4 of the federal Higher

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1 Education Act of 1965;

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

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

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

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

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

17 H. "servicing" includes:

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

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

25 (3) maintaining account records for a student

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1 education loan and communicating with a student loan borrower  
2 regarding a loan on behalf of the loan's holder during a period  
3 when no payment is required on the loan; and

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

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

12 J. "student loan borrower" means:

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

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

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

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

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

25 (2) is unable to engage in any substantial

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

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

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

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

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

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

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

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1 application shall include:

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

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

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

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

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

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

25 D. Upon the filing of an application for an initial

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1 license and the payment of required fees, the director shall  
2 investigate the financial condition and responsibility, the  
3 financial and business experience and the character and general  
4 fitness of the applicant.

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

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

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

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

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

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

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1 (5) a person has not made an incorrect  
2 statement of a material fact on behalf of the applicant either  
3 in the application or in a report or statement made pursuant to  
4 the Student Loan Bill of Rights Act;

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

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

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

15 (9) if the applicant is:

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

18 (b) a partnership, the partnership is  
19 registered to do business in New Mexico and is in good  
20 standing, and each partner is in all respects properly  
21 qualified and of good character;

22 (c) a corporation or an association, the  
23 corporation or association is registered to do business in New  
24 Mexico and is in good standing, and the following are in all  
25 respects properly qualified and of good character: 1) the

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1 president; 2) the executive committee chair; 3) the senior  
2 officer responsible for the corporation's business; 4) the  
3 chief financial officer; 5) any other person who performs  
4 functions similar to those described in Items 1) through 4) of  
5 this subparagraph and as determined by the director; and 6)  
6 each director, each trustee and each shareholder owning ten  
7 percent or more of each class of the securities of the  
8 corporation or association; or

9 (d) a limited liability company, the  
10 limited liability company is registered to do business in New  
11 Mexico and is in good standing, and each officer, manager or  
12 member is in all respects properly qualified and of good  
13 character.

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

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

25 B. A person deemed excepted by the director

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1 pursuant to this section shall, upon payment of the fees  
2 required by Section 4 of the Student Loan Bill of Rights Act,  
3 automatically be issued a license by the director and shall be  
4 considered by the director to have met all requirements set  
5 forth in Subsection F of Section 4 of the Student Loan Bill of  
6 Rights Act.

7 C. A person issued a license pursuant to this  
8 section is exempt from Paragraphs (1) through (3) of Subsection  
9 A, Subsection B and Subsection F of Section 4 of the Student  
10 Loan Bill of Rights Act. A person licensed pursuant to this  
11 section shall comply with the record retention requirements in  
12 Section 8 of the Student Loan Bill of Rights Act except to the  
13 extent that the requirements are inconsistent with federal law.

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

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

8           SECTION 6. [NEW MATERIAL] LICENSE EXPIRATION--LICENSE  
9 SURRENDER--LICENSE RENEWAL--LICENSE SUSPENSION--INFORMATION  
10 UPDATE--LICENSE ABANDONMENT--NO ABATEMENT OF FEES.--

11           A. A license issued pursuant to the Student Loan  
12 Bill of Rights Act shall expire at midnight on December 31 of  
13 the year following its issuance, unless renewed or earlier  
14 surrendered, suspended or revoked pursuant to the Student Loan  
15 Bill of Rights Act.

16           B. Not later than fifteen days after a licensee  
17 ceases to engage in the business of student loan servicing in  
18 New Mexico for any reason, the licensee shall provide written  
19 notice of surrender to the director and shall surrender to the  
20 director its license for each location in which the licensee  
21 has ceased to engage in the business of student loan servicing.  
22 The written notice of surrender shall identify the location  
23 where the records of the licensee will be stored and the name,  
24 address and telephone number of an individual authorized to  
25 provide access to the records. The surrender of a license does

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1 not reduce or eliminate the licensee's civil or criminal  
2 liability arising from acts or omissions occurring prior to the  
3 surrender of the license, including administrative actions by  
4 the director to revoke or suspend a license, assess a civil  
5 penalty, order restitution or exercise any other authority  
6 provided to the director in the Student Loan Bill of Rights  
7 Act.

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

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1           D. If the director determines that a check filed  
2 with the director to pay a renewal fee has been dishonored, the  
3 director shall automatically suspend the license. The director  
4 immediately shall give the licensee notice of the automatic  
5 suspension by any practicable means and initiate proceedings  
6 for revocation or refusal to renew and an opportunity for a  
7 hearing on that action pursuant to the Uniform Licensing Act.

8           E. The applicant or licensee shall notify the  
9 director, in writing, of any change in the information provided  
10 in its initial application for a license or its most recent  
11 renewal application for that license, as applicable, not later  
12 than ten business days after the occurrence of the event that  
13 results in that information becoming inaccurate.

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

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

3 SECTION 7. [NEW MATERIAL] LICENSEE NAMES AND LOCATIONS--  
4 TRANSFERABILITY--ASSIGNABILITY.--

5 A. A licensed student loan servicer shall not  
6 service student education loans under a name or at a place of  
7 business other than as listed in the license. A change of a  
8 place of business shall require prior written notice to the  
9 director. Not more than one place of business shall be  
10 maintained under the same license, but the director may issue  
11 more than one license to the same licensee that is in  
12 compliance with the provisions of the Student Loan Bill of  
13 Rights Act.

14 B. A license for a student loan servicer is not  
15 transferable or assignable.

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

17 A. All private education lenders and student loan  
18 servicers shall maintain adequate records of each student  
19 education loan transaction for at least six years following the  
20 final payment on a student education loan or the assignment of  
21 a student education loan, whichever occurs first, or a longer  
22 period the director may require.

23 B. Within five business days of receipt of a  
24 request for student education loan records from the director, a  
25 private education lender or student loan servicer shall make

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1 the records available to the director or shall send the records  
2 to the director by registered or certified mail, return receipt  
3 requested or by any express delivery carrier that provides a  
4 dated delivery receipt. Upon request, the director may grant a  
5 licensee additional time to make the records available or send  
6 the records to the director.

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

12 A. upon receipt of a written inquiry from a student  
13 loan borrower or the representative of a student loan borrower,  
14 a student loan servicer shall respond by:

15 (1) acknowledging receipt of the written  
16 inquiry within ten days; and

17 (2) within thirty days after receiving the  
18 inquiry, providing information relating to the inquiry and, if  
19 applicable, the action the student loan servicer will take to  
20 correct the student loan borrower's account or an explanation  
21 of the student loan servicer's position that the borrower's  
22 account is correct, including copies of all information and  
23 account information used by the student loan servicer in  
24 reaching the determination;

25 B. a student loan servicer shall inquire of a

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1 student loan borrower how to apply an overpayment or prepayment  
2 to a student education loan. A student loan borrower's  
3 direction on how to apply an overpayment or prepayment to a  
4 student education loan shall stay in effect for any future  
5 overpayments or prepayments during the term of a student  
6 education loan until the borrower provides different  
7 directions. For purposes of this subsection, "overpayment" or  
8 "prepayment" means a payment on a student education loan in  
9 excess of the monthly amount due from a borrower on a student  
10 education loan;

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

23 D. in the absence of a direction provided by a  
24 student loan borrower pursuant to Subsection B of this section,  
25 a student loan servicer shall apply a partial payment or

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1 underpayment in a manner that minimizes late fees and negative  
2 credit reporting. When loans on a student loan borrower's  
3 account have an equal stage of delinquency, a student loan  
4 servicer shall apply a partial payment or underpayment to  
5 satisfy as many individual loan payments as possible on a  
6 borrower's account. For purposes of this subsection, "partial  
7 payment" or "underpayment" means a payment on a student  
8 education loan account that contains multiple individual loans  
9 in an amount less than the amount necessary to satisfy the  
10 outstanding payment due on all loans in the student education  
11 loan account;

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

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1 availability of those benefits, including benefits for which  
2 the student loan borrower has not yet qualified, and:

3 (1) the student loan servicer shall transfer  
4 to the new student loan servicer all information regarding the  
5 student loan borrower, the account of the student loan borrower  
6 and the student education loan of the student loan borrower,  
7 including the repayment status of the student loan borrower and  
8 any benefits associated with the student education loan of the  
9 student loan borrower;

10 (2) the sale, assignment or transfer of the  
11 servicing of the student education loan shall be completed  
12 within forty-five days after the sale, assignment or other  
13 transfer of the servicing of a student education loan; and

14 (3) the parties shall notify affected student  
15 loan borrowers of the sale, assignment or other transfer of the  
16 servicing of the student education loan at least seven days  
17 before the next payment on the loan is due. This notice shall  
18 include:

19 (a) the identity of the new student loan  
20 servicer;

21 (b) the effective date of the transfer  
22 of the student loan borrower's student education loan to the  
23 new student loan servicer;

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

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1 (d) the contact information for the new  
2 student loan servicer;

3 F. a student loan servicer that obtains the right  
4 to service a student education loan shall adopt policies and  
5 procedures to verify that the student loan servicer has  
6 received all information regarding the student loan borrower,  
7 the account of the student loan borrower and the student  
8 education loan of the student loan borrower, including the  
9 repayment status of the student loan borrower and any benefits  
10 associated with the student education loan of the student loan  
11 borrower. The director may investigate these policies and  
12 procedures; and

13 G. a student loan servicer shall inform the student  
14 loan borrower about the availability of a repayment program  
15 based on income prior to placing the borrower in forbearance or  
16 default, if a repayment program based on income is available to  
17 the borrower.

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

20 A. A student loan servicer shall not:

21 (1) directly or indirectly employ a scheme,  
22 device or artifice to defraud or mislead a student loan  
23 borrower;

24 (2) engage in an unfair or deceptive trade  
25 practice or unconscionable trade practice toward a person or

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1 misrepresent or omit material information in connection with  
2 the servicing of a student education loan, including  
3 misrepresenting the amount, nature or terms of a fee or payment  
4 due or claimed to be due on a student education loan, the terms  
5 and conditions of the loan agreement or the student loan  
6 borrower's obligations under the loan;

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

10 (a) material interference with the  
11 ability of a student loan borrower to understand a term or  
12 condition of a student education loan; or

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

23 (4) obtain property by fraud or  
24 misrepresentation;

25 (5) misapply student education loan payments

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1 to the outstanding balance of a student education loan;

2 (6) provide inaccurate information to a credit  
3 bureau;

4 (7) fail to report a favorable or unfavorable  
5 payment history of a student loan borrower to a nationally  
6 recognized consumer credit bureau at least annually if the  
7 student loan servicer regularly reports information to a credit  
8 bureau;

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

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

20 (10) fail to properly evaluate a student loan  
21 borrower for an income-driven or other student loan repayment  
22 program or for eligibility for a public service loan  
23 forgiveness program before placing the student loan borrower in  
24 forbearance or default if an income-driven repayment or other  
25 program is available to the student loan borrower except as

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1 otherwise provided in federal law, federal student loan  
2 agreements or a contract between the federal government and a  
3 student loan servicer;

4 (11) fail to respond within fifteen days to  
5 communication from the student loan ombud, or within a shorter  
6 reasonable time as the student loan ombud may request in the  
7 communication; or

8 (12) fail to respond within fifteen days to a  
9 student loan borrower complaint submitted to the servicer by  
10 the student loan ombud. If necessary, a student loan servicer  
11 may request additional time, up to forty-five days, as long as  
12 the request is accompanied by an explanation of why additional  
13 time is reasonable and necessary.

14 B. A violation of this section is an unfair or  
15 deceptive trade practice or an unconscionable trade practice  
16 pursuant to the Unfair Practices Act and is subject to the  
17 enforcement and penalty provisions contained in that act.

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

19 A. For a private education loan issued or executed  
20 on or after the effective date of the Student Loan Bill of  
21 Rights Act, a private education lender or student loan servicer  
22 acting on behalf of a private education lender, when notified  
23 of the total and permanent disability of a student loan  
24 borrower or cosigner, shall release any cosigner from the  
25 obligations under a private education loan. The lender shall

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1 not attempt to collect a payment from a cosigner upon notice of  
2 total and permanent disability of the cosigner or borrower.

3 B. A lender shall notify a student loan borrower  
4 and cosigner for a private education loan if either the  
5 cosigner or borrower is released from the obligations of the  
6 private education loan under this section within thirty days of  
7 the release.

8 C. Any lender that extends a private education loan  
9 shall provide the student loan borrower an option to designate  
10 an individual to have the legal authority to act on behalf of  
11 the borrower with respect to the private education loan in the  
12 event of the total and permanent disability of the borrower.

13 D. In the event a cosigner is released from the  
14 obligations of a private education loan pursuant to Subsection  
15 A of this section, the lender shall not require the student  
16 loan borrower to obtain another cosigner on the loan  
17 obligation.

18 E. In the event a cosigner is released from the  
19 obligations of a private education loan pursuant to Subsection  
20 A of this section, a lender shall not declare a default or  
21 accelerate the debt against the student loan borrower on the  
22 sole basis of the release of the cosigner from the loan  
23 obligation.

24 F. A lender shall, when notified of the total and  
25 permanent disability of a student loan borrower, discharge the

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1 liability of the borrower and cosigner on the loan.

2 G. After receiving a notification described in  
3 Subsection F of this section, the lender shall not attempt to  
4 collect on the outstanding liability of the student loan  
5 borrower or cosigner or monitor the disability status of the  
6 borrower at any point after the date of discharge.

7 SECTION 12. [NEW MATERIAL] AVAILABILITY OF ALTERNATIVE  
8 REPAYMENT OPTIONS.--

9 A. If a private education lender offers any student  
10 loan borrower flexible or modified repayment options in  
11 connection with a private education loan, those flexible  
12 repayment options shall be made available to all borrowers of  
13 loans by the lender. A lender shall:

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

17 (2) establish policies and procedures and  
18 implement them consistently in order to facilitate evaluation  
19 of private education loan flexible repayment option requests,  
20 including providing accurate information regarding any private  
21 education loan alternative repayment options that may be  
22 available to the student loan borrower through the promissory  
23 note or that may have been marketed to the borrower through  
24 marketing materials.

25 B. A private education lender or a student loan

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1 servicer acting on behalf of a private education lender shall  
2 consistently present and offer flexible or modified private  
3 education loan repayment options to student loan borrowers with  
4 similar financial circumstances if the lender offers such  
5 repayment options.

6 SECTION 13. [NEW MATERIAL] NOTICES REQUIRED AT  
7 ORIGINATION.--

8 A. Prior to the extension of a private education  
9 loan that requires a cosigner, a private education lender shall  
10 deliver the following information to the cosigner:

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

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

17 (3) eligibility for release of the cosigner's  
18 obligation on the private education loan, including the number  
19 of on-time payments and any other criteria required to approve  
20 the release of the cosigner from the loan obligation.

21 B. Prior to offering a person a private education  
22 loan that is being used to refinance an existing education  
23 loan, a private education lender shall provide the person a  
24 disclosure that benefits and protections applicable to the  
25 existing loan may be lost due to the refinancing.

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

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

7           A. For any private education loan that obligates a  
8 cosigner, a lender shall provide the student loan borrower and  
9 the cosigner an annual written notice containing information  
10 about cosigner release, including the administrative,  
11 nonjudgmental criteria the lender requires to approve the  
12 release of the cosigner from the loan obligation and the  
13 process for applying for cosigner release.

14           B. If the student loan borrower has met the  
15 applicable payment requirement to be eligible for cosigner  
16 release, the lender shall send the borrower and the cosigner a  
17 written notification by mail and by electronic mail, where a  
18 borrower or cosigner has elected to receive electronic  
19 communications from the lender, informing the borrower and  
20 cosigner that the payment requirement to be eligible for  
21 cosigner release has been met. The notification shall also  
22 include information about any additional criteria to qualify  
23 for cosigner release and the procedure to apply for cosigner  
24 release.

25           C. A lender shall provide written notice to a

1 student loan borrower who applies for cosigner release but  
2 whose application is incomplete. The written notice shall  
3 include a description of the information needed to consider the  
4 application complete and the date by which the applicant shall  
5 furnish the missing information.

6 D. Within thirty days after a student loan borrower  
7 submits a completed application for cosigner release, the  
8 lender shall send the borrower and cosigner a written notice  
9 that informs the borrower and cosigner whether the cosigner  
10 release application has been approved or denied. If the lender  
11 denies a request for cosigner release, the student loan  
12 borrower may request any documents or information used in the  
13 determination, including the credit score threshold used by the  
14 lender, the borrower's consumer report, the borrower's credit  
15 score and any other documents specific to the borrower. The  
16 lender shall also provide any adverse action notices required  
17 under applicable federal law if the denial is based in whole or  
18 in part on any information contained in a consumer report.

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

22 F. A lender shall not impose any restriction that  
23 permanently bars a student loan borrower from qualifying for  
24 cosigner release, including restricting the number of times a  
25 borrower may apply for cosigner release.

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1           G. A lender shall not impose any negative  
2 consequences on any student loan borrower or cosigner during  
3 the sixty days following the issuance of the notice required  
4 pursuant to Subsection C of this section, or until the lender  
5 makes a final determination about a borrower's cosigner release  
6 application. For the purpose of this subsection, "negative  
7 consequences" includes the imposition of additional eligibility  
8 criteria, negative credit reporting, lost eligibility for  
9 cosigner release, late fees, interest capitalization or other  
10 financial injury.

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

20           I. If a student loan borrower or cosigner requests  
21 a change in terms that restarts the count of consecutive on-  
22 time payments required for cosigner release, the lender shall  
23 notify the borrower and cosigner in writing of the impact of  
24 the change and provide the borrower or cosigner the right to  
25 withdraw or reverse the request to avoid that impact.

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1           J. A student loan borrower shall have the right to  
2 request an appeal of a lender's determination to deny a request  
3 for cosigner release, and the lender shall permit the borrower  
4 to submit additional documentation evidencing the borrower's  
5 ability, willingness and stability to meet the payment  
6 obligations. The student loan borrower may request review of  
7 the cosigner release determination by another employee.

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

18           SECTION 15. [NEW MATERIAL] INFORMATION AVAILABLE TO  
19 COSIGNERS.--

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

23           B. If a lender provides electronic access to  
24 documents and records for a student loan borrower, the lender  
25 shall provide equivalent electronic access to the cosigner.

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1           C. Upon written notice from the student loan  
2 borrower or cosigner, the lender shall redact or withhold  
3 contact information for the borrower and cosigner.

4           **SECTION 16. [NEW MATERIAL] PROHIBITIONS ON THE**  
5 **ACCELERATION OF PRIVATE EDUCATION LOANS.--**

6           A. A private education loan executed on or after  
7 the effective date of the Student Loan Bill of Rights Act shall  
8 not include a provision that permits the private education  
9 lender to accelerate, in whole or in part, payments on the  
10 private education loan, except in cases of payment default. A  
11 lender shall not place any loan or account into default or  
12 accelerate a loan for any reason, other than for payment  
13 default.

14           B. A private education loan executed prior to the  
15 effective date of the Student Loan Bill of Rights Act shall  
16 permit the lender to accelerate payments only if the promissory  
17 note or loan agreement explicitly authorizes an acceleration  
18 and only for the reasons stated in the note or agreement.

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

22           D. Upon receiving notification of the death or  
23 bankruptcy of a cosigner, when the private education loan is  
24 not more than sixty days delinquent at the time of the  
25 notification, the lender shall not change any terms or benefits

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1 under the promissory note, repayment schedule, repayment terms  
2 or monthly payment amount or any other provision associated  
3 with the private education loan.

4 E. A lender shall not place any private loan or  
5 account into default or accelerate a private loan while a  
6 borrower is seeking a private loan modification or enrollment  
7 in a flexible repayment plan, except that a lender may place a  
8 private loan or account into default or accelerate a private  
9 loan for payment default ninety days following the student loan  
10 borrower's default.

11 SECTION 17. [NEW MATERIAL] PRIVATE EDUCATION LENDERS--  
12 PROHIBITED ACTS.--

13 A. A private education lender shall not:

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

17 (2) make a private education loan upon  
18 security of any assignment of or order for the payment of any  
19 salary, wages, commissions or other compensation for services  
20 earned or to be earned. No assignment or order shall be taken  
21 by a lender in connection with a private education loan, or for  
22 the enforcement or repayment thereof, and any assignment or  
23 order taken or given to secure any loan made by any lender  
24 under the Student Loan Bill of Rights Act shall be void;

25 (3) directly or indirectly employ a scheme,



1 device or artifice to defraud or mislead a student loan  
2 borrower or cosigner;

3 (4) engage in an unfair or deceptive trade  
4 practice or unconscionable trade practice toward a person or  
5 misrepresent or omit material information in connection with  
6 the lending or servicing of a private education loan, including  
7 misrepresenting the amount, nature or terms of a fee or payment  
8 due or claimed to be due on a private education loan, the terms  
9 and conditions of the loan agreement or the student loan  
10 borrower's or cosigner's obligations under the loan;

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

14 (a) material interference with the  
15 ability of a student loan borrower or cosigner to understand a  
16 term or condition of a private education loan; or

17 (b) taking unreasonable advantage of any  
18 of the following: a lack of understanding on the part of a  
19 student loan borrower or cosigner of the material risks, costs  
20 or conditions of the private education loan; the inability of a  
21 student loan borrower or cosigner to protect the borrower's or  
22 cosigner's interests when selecting or using a private  
23 education loan or a feature, term or condition of a private  
24 education loan; or the reasonable reliance by the student loan  
25 borrower or cosigner on a person engaged in lending or

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1 servicing a private education loan to act in the interests of  
2 the borrower or cosigner;

3 (6) obtain property by fraud or  
4 misrepresentation;

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

7 (8) provide inaccurate information to a credit  
8 bureau;

9 (9) fail to report a favorable or unfavorable  
10 payment history of a student loan borrower or cosigner to a  
11 nationally recognized consumer credit bureau at least annually  
12 if the private education lender regularly reports information  
13 to a credit bureau;

14 (10) refuse to communicate with an authorized  
15 representative of a student loan borrower or cosigner who  
16 provides a written authorization signed by the student loan  
17 borrower; provided that the private education lender may adopt  
18 procedures reasonably related to verifying that the  
19 representative is authorized to act on behalf of the student  
20 loan borrower;

21 (11) negligently make a false statement or  
22 knowingly and willfully make an omission of a material fact in  
23 connection with any information or report filed with a  
24 governmental agency or in connection with an investigation  
25 conducted by the director or another governmental agency;

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1 (12) fail to respond within fifteen days to  
2 communication from the student loan ombud, or within a shorter  
3 reasonable time as the student loan ombud may request in the  
4 communication; or

5 (13) fail to respond within fifteen days to a  
6 student loan borrower or cosigner complaint submitted to the  
7 lender by the student loan ombud. If necessary, a private  
8 education lender may request additional time, up to forty-five  
9 days, as long as the request is accompanied by an explanation  
10 of why additional time is reasonable and necessary.

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

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

16 A. The director may monitor for risks to consumers  
17 in the provision of student loan servicing and student  
18 education loans, including private education loans in New  
19 Mexico and developments in the market for those services, by  
20 compiling and analyzing data and other information based on any  
21 of the following considerations:

22 (1) the likely risks and costs to consumers  
23 associated with using or repaying a student education loan or  
24 with the servicing of a student education loan;

25 (2) the understanding by consumers of the

1 risks of a student education loan or the servicing of a student  
2 education loan;

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

7 (4) the rates of growth in the offering or  
8 provision of a student education loan or the servicing of that  
9 loan;

10 (5) the extent, if any, to which the risks of  
11 a student education loan or the servicing of a student  
12 education loan disproportionately affect traditionally  
13 underserved consumers; and

14 (6) the type, number and other pertinent  
15 characteristics of private education lenders and student loan  
16 servicers in New Mexico.

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

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1 director may enter into contracts to perform the duties  
2 required by this section, as necessary.

3 C. In order to gather information described in  
4 Subsection B of this section, the director may do the  
5 following:

6 (1) gather and compile information from a  
7 variety of sources, including consumer complaints, voluntary  
8 surveys and voluntary interviews of consumers, surveys and  
9 interviews with private education lenders and student loan  
10 servicers and service providers, and review of available  
11 databases; and

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

20 D. In addition to any other market monitoring  
21 activities deemed necessary by the director pursuant to  
22 Subsection A of this section, the division may gather and  
23 compile information from private education lenders and student  
24 loan servicers to assemble data that assesses the total size of  
25 the student loan market in New Mexico, the servicing of loans

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1 owed by borrowers at risk of default, the servicing of private  
2 education loans owed by borrowers experiencing financial  
3 distress and the servicing of federal student education loans  
4 for borrowers who seek to repay their loans under an income-  
5 driven repayment plan as described in Section 1070 et seq. of  
6 Title 20 of the United States Code.

7 E. The director may, on a quarterly basis, develop  
8 and publicize metrics based on data collected pursuant to this  
9 section, and those metrics may identify each private education  
10 lender and student loan servicer and publish relevant metrics  
11 related to performance of each such persons. In executing the  
12 function described in this section, the director may meet and  
13 confer with the student loan ombud, the state department of  
14 justice and the higher education department.

15 F. To fulfill the monitoring and assessment  
16 authorized by this section and to carry out the purposes of  
17 this section, the director may:

18 (1) retain attorneys, accountants or other  
19 professionals;

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

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

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

6 (5) accept audit reportings made by an  
7 independent certified public accountant for the private  
8 education lender, student loan servicer or person subject to  
9 the Student Loan Bill of Rights Act.

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

11 A. The director may conduct investigations and  
12 examinations for purposes of initial licensing, license  
13 renewal, license suspension, license revocation or termination,  
14 or for general or specific inquiry or investigation, to  
15 determine compliance with the Student Loan Bill of Rights Act.  
16 The director may access, receive and use any documents,  
17 information or evidence the director deems relevant to the  
18 inquiry or investigation regardless of the location,  
19 possession, control or custody of those documents or that  
20 information or evidence.

21 B. For the purposes of investigating violations or  
22 complaints arising pursuant to the Student Loan Bill of Rights  
23 Act or for the purposes of examination, the director may  
24 review, investigate or examine the activities of any private  
25 education lender or student loan servicer as often as necessary

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1 to carry out the purposes of that act. The director may  
2 direct, subpoena or order the attendance of and examine under  
3 oath a person whose testimony may be required about the student  
4 education loan or the business or subject matter of the  
5 examination or investigation and may direct, subpoena or order  
6 the person to produce books, accounts, records, files and any  
7 other documents the director deems relevant to the inquiry.

8 C. In making an examination or investigation  
9 authorized by the Student Loan Bill of Rights Act, the director  
10 may control access to any documents or records of the student  
11 loan servicer licensee or person under examination or  
12 investigation related to the student education loan. The  
13 director may take possession of the documents and records or  
14 place a person in exclusive charge of the documents and records  
15 in the place where the documents and records are usually kept.  
16 During the period of control, a person shall not remove or  
17 attempt to remove any of the documents and records except  
18 pursuant to a court order or with the consent of the director.  
19 Unless the director has reasonable grounds to believe the  
20 documents or records of the student loan servicer licensee or  
21 person have been, or are at risk of being, altered or destroyed  
22 for purposes of concealing a violation of the Student Loan Bill  
23 of Rights Act, the student loan servicer licensee or owner of  
24 the documents and records shall have access to the documents or  
25 records as necessary to conduct its ordinary business affairs.

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1 Nothing in this subsection shall be construed as limiting the  
2 student loan borrower's access to the borrower's own account  
3 records.

4 D. To fulfill the duties imposed by this section  
5 and to carry out the purposes of this section, the director  
6 may:

7 (1) retain attorneys, accountants or other  
8 professionals and specialists as examiners, auditors or  
9 investigators to conduct or assist in the conduct of  
10 examinations or investigations;

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

17 (3) use, hire, contract or employ public or  
18 privately available analytical systems, methods or software to  
19 examine or investigate the student loan servicer, private  
20 education lender or person subject to the Student Loan Bill of  
21 Rights Act;

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

25 (5) accept audit reports made by an

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1 independent certified public accountant for the student loan  
2 servicer, private education lender or person subject to the  
3 Student Loan Bill of Rights Act in the course of that part of  
4 the examination covering the same general subject matter as the  
5 audit and may incorporate the audit report in the report of  
6 examination, report of investigation or other writing of the  
7 director.

8 E. A student loan servicer, private education  
9 lender or person subject to investigation or examination under  
10 this section shall not knowingly withhold, abstract, remove,  
11 mutilate, destroy or secrete any books, records, computer  
12 records or other information.

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

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

25 A. To ensure the effective supervision and

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1 enforcement of the Student Loan Bill of Rights Act and in  
2 accordance with the procedures provided in the Uniform  
3 Licensing Act, the director may:

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

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

12 (3) issue orders or directives as follows:

13 (a) order or direct student loan  
14 servicers or private education lenders to cease and desist from  
15 conducting business related to student education loans,  
16 including issuing an immediate temporary order to cease and  
17 desist;

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

21 (c) enter immediate temporary orders to  
22 cease any business licensed pursuant to the Student Loan Bill  
23 of Rights Act if the director determines that the license was  
24 erroneously granted or the licensed student loan servicer is  
25 currently in violation of that act.

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

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

11           A. Upon a showing by the director that a person has  
12 violated, or is about to violate, the Student Loan Bill of  
13 Rights Act or any rule or order of the director pursuant to  
14 that act, the district court of the first judicial district or  
15 the district court in the judicial district where the student  
16 loan borrower or cosigner resides may grant or impose one or  
17 more of the following:

18                       (1) a temporary restraining order, permanent  
19 or temporary prohibitory or mandatory injunction or a writ of  
20 prohibition or mandamus;

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

23                       (3) declaratory judgment;

24                       (4) restitution to student loan borrowers or  
25 cosigners;

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1 (5) recovery by the director of all costs and  
2 expenses for conducting an investigation or the bringing of any  
3 enforcement action pursuant to the Student Loan Bill of Rights  
4 Act; or

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

6 B. In determining the appropriate relief, the court  
7 shall consider administrative enforcement actions taken and  
8 imposed by the director pursuant to the Student Loan Bill of  
9 Rights Act in connection with the transactions constituting  
10 violations of that act.

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

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

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

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

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1           SECTION 23.   ~~[NEW MATERIAL]~~ PROMULGATION OF RULES.--The  
2 director may promulgate rules and make reasonable orders  
3 necessary to implement the Student Loan Bill of Rights Act. A  
4 copy of every rule and of every order containing requirements  
5 of general application shall be mailed to each licensee not  
6 less than fifteen days before the effective date of the rule or  
7 order.

8           SECTION 24.   ~~[NEW MATERIAL]~~ STUDENT LOAN OMBUD--DUTIES--  
9 ANNUAL REPORT.--

10           A. The director shall designate a student loan  
11 ombud within the division to provide timely assistance to  
12 student loan borrowers.

13           B. The student loan ombud, in collaboration with  
14 the state department of justice and the higher education  
15 department, shall:

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

18                       (2) compile and analyze data regarding student  
19 loan borrower complaints received by the ombud;

20                       (3) assist student loan borrowers and  
21 cosigners in understanding their rights and responsibilities  
22 under the terms of student education loans;

23                       (4) provide information to the public, state  
24 agencies, state legislators and others regarding the problems  
25 and concerns of student loan borrowers and make recommendations

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1 for resolving those problems and concerns;

2 (5) analyze and monitor the development and  
3 implementation of federal laws, regulations and policies and  
4 state laws, rules and policies relating to student loan  
5 borrowers and make recommendations for any changes the ombud  
6 deems necessary;

7 (6) review the complete student education loan  
8 history for any student loan borrower who has provided written  
9 consent for that review;

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

17 (8) take any other action the ombud deems  
18 necessary to fulfill the duties of the student loan ombud.

19 C. The division, including the student loan ombud,  
20 the state department of justice and the higher education  
21 department, or their designees, shall meet at least once per  
22 quarter to coordinate their efforts under Subsection B of this  
23 section.

24 D. On or before July 1, 2026, the student loan  
25 ombud, in collaboration with the state department of justice

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1 and the higher education department, shall establish and  
2 maintain a student loan borrower education course that includes  
3 educational presentations and materials regarding student  
4 education loans. The student loan borrower education course  
5 shall review key loan terms, documentation requirements,  
6 monthly payment obligations, income-based repayment options,  
7 loan forgiveness and disclosure requirements.

8 E. On or before December 1, 2027, and annually  
9 thereafter, the director shall submit a report to the  
10 appropriate legislative interim committee. Annual reports  
11 shall be made available to interested parties and the general  
12 public and published on the division's website and on the  
13 sunshine portal. Consistent with state law, the report shall  
14 include, at a minimum, non-identifying consumer data from the  
15 preceding calendar year, including the following information:

16 (1) for each licensee:

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

19 (b) the number of loans, percentage of  
20 all loans and the total outstanding balance of all loans that  
21 the licensee is servicing that are currently in default;

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

25 (d) the number, percentage of all loans

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1 and the total outstanding balance of all loans that the  
2 licensee is servicing that have been paid off; and

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

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

8 (3) the overall effectiveness of the student  
9 loan ombud position, including information, in the aggregate,  
10 regarding the number and categories of student loan borrower  
11 and cosigner complaints filed with the division and the state  
12 department of justice;

13 (4) the number of student loan borrower and  
14 cosigner complaints investigated and resolved by the division  
15 and the state department of justice; and

16 (5) any recommendations pertaining to the  
17 division's regulation of student loan servicers and private  
18 education lenders and the enforcement of the provisions of the  
19 Student Loan Bill of Rights Act.

20 SECTION 25. [NEW MATERIAL] INFORMATION SHARING.--By July  
21 31, 2026, the division, the student loan ombud, the state  
22 department of justice and the higher education department shall  
23 enter into an agreement to allow for the sharing of all  
24 necessary information.

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

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1           A. A person who suffers damage as a result of the  
2 failure of a student loan servicer or private education lender  
3 to comply with a provision of the Student Loan Bill of Rights  
4 Act may bring an action in district court against that student  
5 loan servicer or private education lender to recover any of the  
6 following:

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

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

12                   (3) restitution of property;

13                   (4) punitive damages;

14                   (5) attorney fees; and

15                   (6) other relief the court deems proper.

16           B. In addition to any other remedies provided by  
17 this section or otherwise provided by law, whenever it is  
18 proven by a preponderance of the evidence that a student loan  
19 servicer or private education lender has engaged in conduct  
20 that substantially interferes with a student loan borrower's  
21 right to an alternative payment arrangement; loan forgiveness,  
22 cancellation or discharge; or any other financial benefit as  
23 established under the terms of a borrower's promissory note or  
24 under the federal Higher Education Act of 1965, and the  
25 regulations promulgated pursuant to that act, the court shall

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1 award treble actual damages to the plaintiff, but in no case  
2 shall the award of damages be less than one thousand five  
3 hundred dollars (\$1,500) per violation.

4 C. The remedies provided in the Student Loan Bill  
5 of Rights Act are not intended to be the exclusive remedies  
6 available to a person suffering damage due to the noncompliance  
7 of a student loan servicer or private education lender, and the  
8 person shall not be required to exhaust administrative remedies  
9 established pursuant to the Student Loan Bill of Rights Act or  
10 any other applicable law prior to bringing a private right of  
11 action.

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

14 A. The "student loan bill of rights fund" is  
15 created as a nonreverting fund in the state treasury and shall  
16 be administered by the division. The fund consists of fees  
17 collected by the division pursuant to the Student Loan Bill of  
18 Rights Act and money that is appropriated or donated or that  
19 otherwise accrues to the fund. Income from investment of the  
20 fund shall be credited to the fund.

21 B. Money in the student loan bill of rights fund is  
22 appropriated to the division to carry out the provisions of the  
23 Student Loan Bill of Rights Act.

24 C. Expenditures from the fund shall be made on  
25 warrants drawn by the secretary of finance and administration

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1 pursuant to vouchers signed by the director or the director's  
2 authorized representative.

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

5 "57-12-2. DEFINITIONS.--As used in the Unfair Practices  
6 Act:

7 A. "person" means, where applicable, natural  
8 persons, corporations, trusts, partnerships, associations,  
9 cooperative associations, clubs, companies, firms, joint  
10 ventures or syndicates;

11 B. "seller-initiated telephone sale" means a sale,  
12 lease or rental of goods or services in which the seller or the  
13 seller's representative solicits the sale by telephoning the  
14 prospective purchaser and in which the sale is consummated  
15 entirely by telephone or mail, but does not include a  
16 transaction:

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

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

24 C. "trade" or "commerce" includes the advertising,  
25 offering for sale or distribution of any services and any

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1 property and any other article, commodity or thing of value,  
2 including any trade or commerce directly or indirectly  
3 affecting the people of this state;

4 D. "unfair or deceptive trade practice" means an  
5 act specifically declared unlawful pursuant to the Unfair  
6 Practices Act, a false or misleading oral or written statement,  
7 visual description or other representation of any kind  
8 knowingly made in connection with the sale, lease, rental or  
9 loan of goods or services or in the extension of credit or in  
10 the collection of debts by a person in the regular course of  
11 the person's trade or commerce, that may, tends to or does  
12 deceive or mislead any person and includes:

13 (1) representing goods or services as those of  
14 another when the goods or services are not the goods or  
15 services of another;

16 (2) causing confusion or misunderstanding as  
17 to the source, sponsorship, approval or certification of goods  
18 or services;

19 (3) causing confusion or misunderstanding as  
20 to affiliation, connection or association with or certification  
21 by another;

22 (4) using deceptive representations or  
23 designations of geographic origin in connection with goods or  
24 services;

25 (5) representing that goods or services have

1 sponsorship, approval, characteristics, ingredients, uses,  
2 benefits or quantities that they do not have or that a person  
3 has a sponsorship, approval, status, affiliation or connection  
4 that the person does not have;

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

8 (7) representing that goods or services are of  
9 a particular standard, quality or grade or that goods are of a  
10 particular style or model if they are of another;

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

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

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

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

23 (12) making false or misleading statements of  
24 fact for the purpose of obtaining appointments for the  
25 demonstration, exhibition or other sales presentation of goods

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1 or services;

2 (13) packaging goods for sale in a container  
3 that bears a trademark or trade name identified with goods  
4 formerly packaged in the container, without authorization,  
5 unless the container is labeled or marked to disclaim a  
6 connection between the contents and the trademark or trade  
7 name;

8 (14) using exaggeration, innuendo or ambiguity  
9 as to a material fact or failing to state a material fact if  
10 doing so deceives or tends to deceive;

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

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

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

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

19 (19) offering or providing unposted or  
20 unadvertised pricing or service based on the buyer's gender or  
21 perceived gender identity; provided, however, that this  
22 provision does not apply to persons regulated by the office of  
23 superintendent of insurance pursuant to the New Mexico  
24 Insurance Code; or

25 (20) violating Section 10 or 17 of the Student

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1 Loan Bill of Rights Act; and

2 E. "unconscionable trade practice" means an act or  
3 practice in connection with the sale, lease, rental or loan, or  
4 in connection with the offering for sale, lease, rental or  
5 loan, of any goods or services, including services provided by  
6 licensed professionals, or in the extension of credit or in the  
7 collection of debts that to a person's detriment:

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

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

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

15 SECTION 29. APPLICABILITY.--The provisions of Section 11  
16 of this act apply to private education loans issued on or after  
17 January 1, 2026.

18 SECTION 30. EFFECTIVE DATE.--The effective date of the  
19 provisions of this act is January 1, 2026.