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HOUSE BILL 172

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Patricia Roybal Caballero and Dayan Hochman-Vigil
and Bill Tallman

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; ENACTING THE STUDENT LOAN
BILL OF RIGHTS ACT; PROVIDING PENALTIES.

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

SECTION 1. A new section of Chapter 61 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the
"Student Loan Bill of Rights Act"."

SECTION 2. A new section of Chapter 61 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Student Loan
Bill of Rights Act:

- A. "director" means the director of the division;
- B. "division" means the financial institutions

division of the regulation and licensing department;

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C. "servicing" means:

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

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

(3) performing other administrative services with respect to student education loans;

D. "student education loan" means a loan primarily for personal use to finance higher-education-related expenses, but does not include an isolated personal loan made by an individual to another for higher-education-related expenses;

E. "student loan borrower" means:

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

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

F. "student loan servicer" means a person engaged in the business of servicing of student education loans to a student loan borrower."

SECTION 3. A new section of Chapter 61 NMSA 1978 is enacted to read:

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1 "[NEW MATERIAL] LICENSE REQUIRED--EXEMPTIONS.--

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

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

9 (1) a bank or credit union;

10 (2) a wholly owned subsidiary of a bank or
11 credit union; and

12 (3) an operating subsidiary of a bank or
13 credit union where each owner of the operating subsidiary is
14 wholly owned by the same bank or credit union."

15 SECTION 4. A new section of Chapter 61 NMSA 1978 is
16 enacted to read:

17 "[NEW MATERIAL] LICENSE APPLICATION--INVESTIGATION--
18 LICENSE ISSUANCE.--

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

23 (1) a financial statement prepared by a
24 certified or registered public accountant, the accuracy of
25 which is sworn to under oath before a notary public by the

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1 proprietor, a general partner or a corporate officer or a
2 member duly authorized to execute such documents;

3 (2) the history of criminal convictions of
4 the:

5 (a) applicant;

6 (b) partners, if the applicant is a
7 partnership;

8 (c) members, if the applicant is a
9 limited liability company or association; or

10 (d) officers, directors and principal
11 employees, if the applicant is a corporation;

12 (3) sufficient information pertaining to the
13 history of criminal convictions of the applicant, partners,
14 members, officers, directors or principal employees as the
15 director deems necessary to make the findings required pursuant
16 to Subsection D of this section;

17 (4) a nonrefundable license fee of one
18 thousand dollars (\$1,000); and

19 (5) a nonrefundable investigation fee of eight
20 hundred dollars (\$800).

21 B. Upon the filing of an application for an initial
22 license and the payment of required fees, the director shall
23 investigate the financial condition and responsibility, the
24 financial and business experience and the character and general
25 fitness of the applicant.

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1 C. The director may conduct a state and national
2 criminal history records check of the applicant and of each
3 partner, member, officer, director and principal employee of
4 the applicant.

5 D. The director shall issue a license for a student
6 loan servicer pursuant to the Student Loan Bill of Rights Act
7 if the director finds that:

8 (1) the applicant has submitted a completed
9 application;

10 (2) the applicant's financial condition is
11 sound;

12 (3) the applicant's business will be conducted
13 honestly, fairly, equitably, carefully and efficiently within
14 the purposes and intent of the Student Loan Bill of Rights Act
15 and in a manner commanding the confidence and trust of the
16 community;

17 (4) a person has not made an incorrect
18 statement of a material fact on behalf of the applicant either
19 in the application or in a report or statement made pursuant to
20 the Student Loan Bill of Rights Act;

21 (5) a person on behalf of the applicant has
22 not knowingly omitted to state a material fact on behalf of the
23 applicant necessary to give the director information lawfully
24 required by the director pursuant to the Student Loan Bill of
25 Rights Act;

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1 (6) the applicant has paid the license fee and
2 investigation fee required pursuant to this section;

3 (7) the applicant has met all other
4 requirements pursuant to the Student Loan Bill of Rights Act as
5 determined by the director; and

6 (8) if the applicant is:

7 (a) an individual, that the individual
8 is in all respects properly qualified and of good character;

9 (b) a partnership, that each partner is
10 in all respects properly qualified and of good character;

11 (c) a corporation or association, that
12 the following are in all respects properly qualified and of
13 good character, including the corporation's or association's:
14 1) president; 2) executive committee chair; 3) senior officer
15 responsible for the corporation's business; 4) chief financial
16 officer; or 5) or any other person who performs functions
17 similar to those described in Items 1) through 4) of this
18 subparagraph and as determined by the director; and 6) each
19 director, each trustee and each shareholder owning ten percent
20 or more of each class of the securities of the corporation or
21 association; or

22 (d) a limited liability company, that
23 each member is in all respects properly qualified and of good
24 character."

25 SECTION 5. A new section of Chapter 61 NMSA 1978 is

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1 enacted to read:

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

5 A. A license issued pursuant to the Student Loan
6 Bill of Rights Act shall expire at the close of business on
7 September 30 of the year following its issuance, unless renewed
8 or earlier surrendered, suspended or revoked pursuant to the
9 Student Loan 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 pursuant to the Student Loan Bill of

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1 Rights Act.

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

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

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1 opportunity for a hearing on such actions pursuant to the
2 Uniform Licensing Act.

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

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

22 G. A license fee paid pursuant to the Student Loan
23 Bill of Rights Act shall not be abated."

24 SECTION 6. A new section of Chapter 61 NMSA 1978 is
25 enacted to read:

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1 "[NEW MATERIAL] LICENSEE NAMES AND LOCATIONS--
2 TRANSFERABILITY--ASSIGNABILITY.--

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

12 B. A license for a student loan servicer is not
13 transferable or assignable."

14 SECTION 7. A new section of Chapter 61 NMSA 1978 is
15 enacted to read:

16 "[NEW MATERIAL] RECORD RETENTION.--

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

22 B. Within five business days of receipt of a
23 request for student loan education records from the director, a
24 student loan servicer shall make the records available to the
25 director, or shall send the records to the director by

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

6 SECTION 8. A new section of Chapter 61 NMSA 1978 is
7 enacted to read:

8 "[NEW MATERIAL] STUDENT LOAN SERVICERS--PROHIBITED ACTS.--

9 A student loan servicer shall not:

10 A. directly or indirectly employ a scheme, device
11 or artifice intended to defraud or mislead a student loan
12 borrower;

13 B. engage in an unfair or deceptive practice toward
14 a person or misrepresent or omit material information in
15 connection with the servicing of a student education loan,
16 including misrepresenting the amount, nature or terms of a fee
17 or payment due or claimed to be due on a student education
18 loan, the terms and conditions of the loan agreement or the
19 student loan borrower's obligations under the loan;

20 C. obtain property by fraud or misrepresentation;

21 D. knowingly misapply or recklessly apply student
22 education loan payments to the outstanding balance of a student
23 education loan;

24 E. knowingly or recklessly provide inaccurate
25 information to a credit bureau;

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1 F. fail to report a favorable or unfavorable
2 payment history of a student loan borrower to a nationally
3 recognized consumer credit bureau at least annually if the
4 student loan servicer regularly reports information to a credit
5 bureau;

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

12 H. negligently make a false statement or knowingly
13 and wilfully make an omission of a material fact in connection
14 with any information or report filed with a governmental agency
15 or in connection with an investigation conducted by the
16 director or another governmental agency."

17 SECTION 9. A new section of Chapter 61 NMSA 1978 is
18 enacted to read:

19 "[NEW MATERIAL] POWERS OF THE DIRECTOR.--

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

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1 information or evidence the director deems relevant to the
2 inquiry or investigation regardless of the location,
3 possession, control or custody of such documents, information
4 or evidence.

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

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

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1 the documents and records except pursuant to a court order or
2 with the consent of the director. Unless the director has
3 reasonable grounds to believe the documents or records of the
4 student loan servicer licensee or person have been, or are at
5 risk of being, altered or destroyed for purposes of concealing
6 a violation of the Student Loan Bill of Rights Act, the student
7 loan servicer licensee or owner of the documents and records
8 shall have access to the documents or records as necessary to
9 conduct its ordinary business affairs.

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

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

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

23 (3) use, hire, contract or employ public or
24 privately available analytical systems, methods or software to
25 examine or investigate the student loan servicer licensee or

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1 person subject to the Student Loan Bill of Rights Act;

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

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

12 E. The authority of this section shall remain in
13 effect, whether a student loan servicer licensee or person
14 subject to the provisions of the Student Loan Bill of Rights
15 Act acts or claims to act under any licensing or registration
16 law of New Mexico or claims to act without such authority.

17 F. A student loan servicer licensee or person
18 subject to investigation or examination under this section
19 shall not knowingly withhold, abstract, remove, mutilate,
20 destroy or secrete any books, records, computer records or
21 other information."

22 SECTION 10. A new section of Chapter 61 NMSA 1978 is
23 enacted to read:

24 "[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 D of Section 4 of
11 the Student Loan Bill of Rights Act;

12 (3) impose fines on a student loan servicer
13 pursuant to Subsection B of this section;

14 (4) bar or suspend a student loan servicer
15 from licensure in New Mexico as a student loan servicer; and

16 (5) issue orders or directives as follows:

17 (a) order or direct student loan
18 servicers to cease and desist from conducting business related
19 to student loans, including issuing an immediate temporary
20 order to cease and desist;

21 (b) order or direct student loan
22 servicers to cease any violations of the Student Loan Bill of
23 Rights Act; and

24 (c) enter immediate temporary orders to
25 cease any business licensed pursuant to the Student Loan Bill

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1 of Rights Act if the director determines that the license was
2 erroneously granted or the licensed student loan servicer is
3 currently in violation of that act.

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

13 SECTION 11. A new section of Chapter 61 NMSA 1978 is
14 enacted to read:

15 "[NEW MATERIAL] JUDICIAL ENFORCEMENT.--

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

- 23 (1) a temporary restraining order, permanent
24 or temporary prohibitory or mandatory injunction or a writ of
25 prohibition or mandamus;

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- 1 (2) a civil penalty up to a maximum of five
- 2 thousand dollars (\$5,000) for each violation;
- 3 (3) declaratory judgment;
- 4 (4) restitution to student loan borrowers;
- 5 (5) recovery by the director of all costs and
- 6 expenses for conducting an investigation or the bringing of any
- 7 enforcement action under the Student Loan Bill of Rights Act;
- 8 or
- 9 (6) other relief as the court deems just.

10 B. In determining the appropriate relief, the court

11 shall consider enforcement actions taken and imposed by the

12 director pursuant to the Student Loan Bill of Rights Act in

13 connection with the transactions constituting violations of

14 that act.

15 C. The court shall not require the director to post

16 bond in an action pursuant to this section."

17 SECTION 12. A new section of Chapter 61 NMSA 1978 is

18 enacted to read:

19 "[NEW MATERIAL] CRIMINAL PENALTIES.--

20 A. An individual who acts as a student loan

21 servicer without being properly licensed pursuant to the

22 Student Loan Bill of Rights Act is, for a first offense, guilty

23 of a misdemeanor and upon conviction shall be sentenced in

24 accordance with the provisions of Subsection A of Section

25 31-19-1 NMSA 1978.

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

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

8 **SECTION 13.** A new section of Chapter 61 NMSA 1978 is
9 enacted to read:

10 "[NEW MATERIAL] COMPLIANCE WITH FEDERAL LAW.--A student
11 loan servicer shall comply with all applicable federal laws and
12 regulations relating to student loan servicing, including the
13 Truth in Lending Act, 15 U.S.C. Section 1601 et seq., as
14 amended, and the regulations promulgated under that act. In
15 addition to any other remedies provided by law, a violation of
16 the federal law or regulation is a violation of the Student
17 Loan Bill of Rights Act."

18 **SECTION 14.** A new section of Chapter 61 NMSA 1978 is
19 enacted to read:

20 "[NEW MATERIAL] PROMULGATION OF RULES.--The director shall
21 promulgate rules necessary to implement the Student Loan Bill
22 of Rights Act. The rules shall be subject to judicial review
23 in the manner set forth in Section 12-8-8 NMSA 1978."

24 **SECTION 15.** A new section of Chapter 61 NMSA 1978 is
25 enacted to read:

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1 "[NEW MATERIAL] STUDENT LOAN OMBUDSMAN--DUTIES--ANNUAL
2 REPORT.--

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

6 B. The student loan ombudsman shall:

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

9 (2) compile and analyze data regarding student
10 loan borrower complaints as described in Paragraph (1) of this
11 subsection;

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

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

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

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

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1 (7) disseminate information concerning the
2 availability of the student loan ombudsman to assist student
3 loan borrowers and potential student loan borrowers, public
4 institutions of higher education, student loan servicers and
5 other participants in student education loan lending with
6 student loan servicing concerns; and

7 (8) take any other action deemed necessary to
8 fulfill the duties of the student loan ombudsman.

9 C. On or before July 1, 2020, the student loan
10 ombudsman shall establish and maintain a student loan borrower
11 education course that includes educational presentations and
12 materials regarding student education loans. The student loan
13 borrower education course shall review key loan terms,
14 documentation requirements, monthly payment obligations,
15 income-based repayment options, loan forgiveness and disclosure
16 requirements. Any license, renewal, late filing or
17 investigation fees imposed pursuant to the Student Loan Bill of
18 Rights Act shall be distributed to the division for the
19 administration and expenses incurred for offering the course.

20 D. On or before December 1, 2021, and annually
21 thereafter, the director shall submit a report to the
22 appropriate legislative interim committee and address the
23 following:

24 (1) the implementation of the Student Loan
25 Bill of Rights Act;

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1 (2) the overall effectiveness of the student
2 loan ombudsman position; and

3 (3) any recommendations pertaining to the
4 division's regulation of student loan servicers and the
5 enforcement of the provisions of the Student Loan Bill of
6 Rights Act."

7 SECTION 16. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is January 1, 2020.

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