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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**56th Legislature, 1st Session, 2023**

<b>Bill Number</b>	<u>HB82/aHEC</u>	<b>Sponsor</b>	<u>Chandler/Roybal Caballero</u>
<b>Tracking Number</b>	<u>.223854.3</u>	<b>Committee Referrals</b>	<u>HEC/HAFC</u>
<b>Short Title</b>	<u>Student Loan Bill of Rights Act</u>		
<b>Analyst</b>	<u>Hathaway</u>	<b>Original Date</b>	<u>1/29/23</u>
		<b>Last Updated</b>	<u>2/15/23</u>

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**BILL SUMMARY**

Synopsis of HEC Amendment

The House Education Committee (HEC) amendment to HB82 (HB82/aHEC) adds clarifying language to various parts of the bill. In Section 2 of the bill, the HEC amendment includes tuition in the definition of a postsecondary education; allowable expenses would include tuition, and costs related to courses, instruction, training, or education. The HEC amendment also adds clarifying language in Section 4 that any partnerships, corporations or associations, or limited liability companies referenced in the bill must be registered to do business in New Mexico and be in good standing. Finally, the HEC amendment also clarifies in Section 21 that any violations of the proposed Student Loan Bill of Rights would be acted upon by the district court in the judicial court where the student loan borrower or cosigner resides.

Synopsis of Original Bill

House Bill 82 (HB82) creates a Student Loan Bill of Rights Act relating to private student loans. The proposed act would regulate student loan servicers and private education lenders that extend private education loans. The bill charges the director of the Financial Institutions Division (FID) of the New Mexico Regulation and Licensing Department (RLD) with issuing licenses to student loan servicers and private education lenders. The bill also establishes criteria for licensing and outlines, in detail, the responsibilities, requirements, and expectations of FID to carry out the proposed requirements of the Student Loan Bill of Rights Act. HB82 also directs FID to designate an ombudsman within the division and requires various data monitoring, analysis, and reporting.

See the “Substantive Issues” section of this analysis for a detailed synopsis of the bill by each section.

The effective date of this bill is January 1, 2024.

**FISCAL IMPACT**

HB82/aHEC does not contain an appropriation.

HB82/aHEC creates a “student loan bill of rights fund” in the state treasury. This nonreverting fund would consist of licensing fees collected by RLD related to the Student Loan Bill of Rights Act and money that is otherwise appropriated, donated, or that accrues to the fund.

In its original analysis, RLD reports it would need four full-time employees to implement the requirements of HB82 and estimates it would need an additional \$455.9 thousand each year to fund salaries and benefits for these employees. RLD notes the four positions created would be for the proposed ombudsman position, two examiners, and a licensing specialist.

RLD also notes revenue projections are indeterminate because the number of loan servicers impacted are unknown. Student loan servicers are currently not required to license or register in New Mexico. Similarly, the Higher Education Department (HED) reports it does not currently collect data on how many private colleges and universities offer private student loans in New Mexico.

In its original analysis of HB82, HED states it is unknown whether the fees collected will be sufficient to carry out the provisions of HB82 and if those fees are intended to support the activities of the ombudsman's office.

## **SUBSTANTIVE ISSUES**

**Background Information.** The Student Borrower Protection Center, a nonprofit advocacy organization focused on student debt, reports that since 2014, 11 states (California, Colorado, Connecticut, Illinois, Maryland, Maine, New Jersey, New York, Rhode Island, Virginia, and Washington) and the District of Columbia have passed legislation to establish a student loan borrower bill of rights. It is unclear how these bills of right in other states compare with the proposed Student Loan Bill of Rights as detailed in HB82/aHEC.

**Detailed Synopsis of HB82.** The following bullet points include a section-by-section analysis of the proposed Student Loan Bill of Rights Act:

- **Section 1.** Provides a short title of the proposed sections to be cited as the “Student Loan Bill of Rights Act.”
- **Section 2.** Provides definitions as used in the proposed Student Loan Bill of Rights. Notably, this includes a definition of a “private education loan” as a loan that includes the extension of credit not made, insured, or guaranteed under Title IV of the federal Higher Education Act of 1965. Section 2 also exempts banks or credit unions (and their subsidiaries) and HED from being defined as a “private education lender.”
- **Section 3.** Outlines license requirements and exemptions from requirements. Notably, it requires student loan servicers to be licensed by RLD and exempts banks or credit unions (and their subsidiaries) and HED from being subject to licensing requirements proposed by HB82.
- **Section 4.** Outlines the licensure application process to become a student loan servicer and includes criteria to apply as well as fees to apply. This section also outlines criteria for RLD to issue a license to student loan servicers.
- **Section 5.** Outlines exceptions from the licensure process for federal student loan servicing contractors. This section still requires federal student loan servicing contractors to pay required fees to become a licensed student loan servicer. This section also outlines criteria and procedures to maintain a license.

- **Section 6.** Explains the procedures related to license expiration, surrender, renewal, suspension, and abandonment. This section also notes a license fee paid pursuant to the proposed Student Loan Bill of Rights Act shall not be abated.
- **Section 7.** Details requirements related to licensee names and locations. It prohibits any licensed student loan servicer from servicing student education loans under a name or at a place of business other than what is listed on its license and details procedures related to a change of a place of business. It also prohibits a license from being transferable or assignable.
- **Section 8.** Details procedures and requirements related to record retention. It would require all loan servicers to maintain adequate records for at least six years following the final payment on a student education loan or the assignment of a student education loan, whichever occurs first. This section also details requirements and deadlines for a loan servicer to make records available.
- **Section 9.** Details requirements for loan servicers to respond to inquiries from student borrowers. This section creates a formal process for inquiries related to borrowers' accounts, application of payments, and assignment or transfer of a loan to a third party. It also requires student loan servicers to inform student loan borrowers about the availability of income-based repayment programs prior to placing a borrower in forbearance or default.
- **Section 10.** Establishes prohibited acts by student loan services. This section also details how violations of this section would be subject to the Unfair Practices Act and enforcement and penalty provisions contained in that act.
- **Section 11.** Details procedures and requirements of private education lenders or student loan servicers acting on behalf of private education lenders related to the total and permanent disability of a student loan borrower or their cosigner.
- **Section 12.** Details requirements of private education lenders related to alternative repayment options including flexible or modified repayment options. This section notes that if any borrower is offered an alternative repayment option, those same options must be made available to all borrowers and a lender is required to post on its website a description of repayment options and to establish policies and procedures to implement such repayment options.
- **Section 13.** Requires various notices at the origination of a loan, particularly related to the extension of a private education loan that requires a cosigner and prior to offering a person a private education loan that is being used to refinance an existing education loan.
- **Section 14.** Establishes a process for releasing cosigners from loan obligations.
- **Section 15.** Establishes requirements for information to be made available to cosigners.
- **Section 16.** Prohibits the acceleration of private education loans executed on or after the effective date of the proposed Student Loan Bill of Rights Act. Loans executed prior to the effective date of the proposed Student Loan Bill of Rights Act may be subject to accelerated payments only if allowed in the promissory note or loan agreement. Section 16 prohibits lenders from attempting to collect against a cosigner's estate, other than for payment default.
- **Section 17.** Establishes prohibited acts by private education lenders.
- **Section 18.** Allows the director of FID at RLD to monitor or assess for risk to consumers in education loans, including by compiling and analyzing a broad range of data and information. This section also allows the director to enter into contracts to perform the proposed duties required by this section.
- **Sections 19–21.** Outlines the powers of the director to adhere to all of the proposed duties and responsibilities proposed by the Student Loan Bill of Rights Act, allow judicial enforcement of the proposed act, and create civil penalties.

- **Section 22.** Outlines required compliance with federal law for both student loan servicer licensees and private education lenders.
- **Section 23.** Allows the director to promulgate rules and make “reasonable” orders necessary to implement the proposed Student Loan Bill of Rights Act. It also requires any rules and orders to be mailed to each licensee.
- **Section 24.** Establishes a student loan ombudsman at the FID at RLD and details responsibilities of the ombudsman. The student loan ombudsman would be required to collaborate with the Office of the Attorney General (NMAG) and HED. This section provides that on or before July 1, 2024, the ombudsman, along with NMAG and HED, would have to collaborate to establish a student loan borrower education course, and on or before December 1, 2025, provide a status report to the appropriate legislative interim committee. Those annual reports would also be required to be made available to the public and published on the division’s website and the state’s sunshine portal.
- **Section 25.** Requires FID at RLD, NMAG, and HED to enter into an information sharing agreement by July 31, 2024.
- **Section 26.** Creates a civil cause of action to recover actual and punitive damages and legal fees.
- **Section 27.** Creates the “student loan bill of rights fund” as a nonreverting fund in the state treasury to consist of fees collected pursuant to the act and money that is appropriated or donated or that otherwise accrues to the fund. Money in the fund is appropriated to FID to carry out the proposed act.
- **Section 28.** Amends existing statute to add adds prohibited acts as defined in HB82 to the list of acts that constitute “unfair or deceptive trade practices” under the Unfair Practices Act at Section 57-12-21 NMSA 1978.
- **Sections 29–30.** Provides that the provisions of the bill apply to private education loans issued on or after January 1, 2024, and set the effective date of the bill as January 1, 2024.

In its original analysis of HB82, HED notes that because HB82 exempts banks, credit unions, and their wholly-owned subsidiaries from the provisions of the act, this may exempt a significant proportion of privately held student loans from the legislation and could leave such borrowers with limited avenues of dispute resolution.

HED also notes HB82 directs the proposed ombudsman to interface with the public on matters regarding student loans without reference to the type of loan the borrower may carry. HED notes creating this position may be duplicative as the U.S. Department of Education (USDOE) provides borrower services for all federal student loans. All student loan servicers under contract from the USDOE servicing legacy Federal Family Educational Loans (FFEL) are required to have an ombudsman office that serves as the primary point of contact for borrowers and their concerns, and in practice, all servicers under contract with USDOE maintain such an office. The largest private, nonprofit student loan servicer in New Mexico, the New Mexico Educational Assistance Foundation, also maintains an Office of the Ombudsman. The HED Student Financial Aid Division also a hotline for students with concerns regarding any aspect of student financial aid.

## ADMINISTRATIVE IMPLICATIONS

HB82/aHEC directs the FID at RLD to administer the provisions of the legislation. NMAG, HED, and the FID at RLD would also have to collaborate to meet the proposed provisions of HB82/aHEC. As noted in the original “Fiscal Impact” section above, RLD indicates a need for four full-time employees to carry out the proposed Student Loan Bill of Rights Act. RLD notes that for the first year of operation, prior to the receipt of proposed licensing fees revenues, these

positions and costs will need to come from the general fund. It is anticipated these positions and operating costs, after a year of collecting licensing fees credited to the newly created nonreverting fund, will thereafter be paid from the nonreverting fund. NMAG notes HB82 creates a new unfair/unconscionable practice act which is enforceable by NMAG.

### **TECHNICAL ISSUES**

In its original analysis of HB82, RLD notes the FID at RLD uses the Nationwide Multistate Licensing System and Registry (NMLS) for the licensing of several financial industries regulated by FID. The bill allows use of NMLS to conduct licensing applications and process activities for the licensing of student loan servicers. RLD notes utilization of NMLS for licensing purposes would allow for efficiency and cost savings, however, HB82 would require the renewal of applications to be filed on or before November 1 of the year in which the license expires. It further notes applications filed between November 1 and before December 31 must be accompanied by a \$100 late fee. RLD notes that to be compatible with the NMLS system, the licensing period should begin November 1 and not be considered late until after December 31.

In its original analysis of HB82, NMAG notes Section 2 and Section 28 both hold definitions. Specifically, they each hold a different definition for the word “person” which could add confusion in interpreting the proposed act.

### **SOURCES OF INFORMATION**

- LESC Files
- Higher Education Department
- Office of the Attorney General
- Regulation and Licensing Department

**JKH/cf/mb/cf**