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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
56th Legislature, 2nd Session, 2024

Bill Number	<u>HB71</u>	Sponsor	<u>Chandler/Hochman-Vigil/Roybal Caballero</u>
Tracking Number	<u>.227043.3</u>	Committee Referrals	<u>HEC/HCEDC</u>
Short Title	<u>Student Loan Bill of Rights Act</u>		
Analyst	<u>Hathaway</u>	Original Date	<u>1/22/24</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Bill

House Bill 71 (HB71) 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 proposed act would provide for discharge of loans in cases of permanent disability. 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. HB71 also directs FID to designate an ombud position within the division that would be responsible for reviewing and resolving complaints, providing information about borrower's rights and responsibilities, and monitoring trends in related federal, state, and local laws. The act also requires various data monitoring, analysis, and reporting, including submitting annual reports to the Legislature.

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, 2025.

FISCAL IMPACT

HB71 does not contain an appropriation.

HB71 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 accrues to the fund.

In its analysis of HB71, the Regulation and Licensing Division (RLD) reports it would need four full-time employees to implement the requirements of HB71 and estimates it would need an additional \$569.9 thousand each year to fund salaries and benefits for these employees, along with

operational expenses. RLD notes the four positions created would be for the proposed ombud position, two examiners, and a licensing specialist. RLD also notes there are no projected budget impacts in FY25 given the proposed implementation date.

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.

In its analysis of HB71, the Higher Education Department (HED) notes HB71 creates a fund within the state treasury, but it is unknown if the fees collected will be sufficient to carry out the provisions of the proposed legislation and if those fees are intended to support the activities of the ombud'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 HB71.

Student Loan Debt in New Mexico. HED reports citizens in New Mexico have historically carried lower levels of student debt due to the state's free tuition and fees initiatives for students pursuing postsecondary education. National [data](#) shows there are about 232,000 residents in New Mexico that carry student loan debt with a total amount owed of \$7.9 billion. This means an average student loan balance of just over \$34 thousand.

Detailed Synopsis of HB71. 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 HB71.
- **Section 4.** Outlines the licensure application process to become a student loan servicer and includes criteria to apply—including a process that includes investigating applicants and conducting background checks to assess if they are financially sound and of good character—as well as fees to apply, which are not to exceed \$5,000 each. 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, specifically taking as security salary, wages, commissions, or other compensation, defrauding or misleading student borrowers, engaging in unfair or deceptive practices, and misapplying student loan payments
- **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 of FID at RLD 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 ombud at the FID at RLD and details responsibilities of the ombud. The student loan ombud would be required to collaborate with the Office of the Attorney General (NMAG) and HED. This section provides that on or before July 1, 2025, the ombud, along with NMAG and HED, would have to collaborate to establish a student loan borrower education course, and on or before December 1, 2026, 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, 2025.
- **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 prohibited acts as defined in HB71 to the list of acts that constitute “unfair or deceptive trade practices” under the Unfair Practices Act at Section 57-12-2 NMSA 1978.
- **Sections 29–30.** Provides that the provisions of the bill apply to private education loans issued on or after January 1, 2025, and sets the effective date of the bill as January 1, 2025.

ADMINISTRATIVE IMPLICATIONS

HB71 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 HB71. As noted in the “Fiscal Impact” section above, RLD indicates a need for four full-time employees to carry out the proposed Student Loan Bill of Rights Act.

The bill also directs the creation of a student loan ombud position. FID at RLD reports student loan services under contract with the U.S. Department of Education are required to have an ombud office to address borrower concerns. RLD also notes the largest private, nonprofit student loan services in New Mexico, the New Mexico Educational Assistance Foundation, maintains a hotline for student concerns.

TECHNICAL ISSUES

In its analysis of HB71, RLD notes the FID utilizes the Nationwide Multistate Licensing System and Registry (NMLS) for the licensing of several financial industries regulated by the FID. The bill allows use of the NMLS to conduct licensing applications and process activities for the licensing of student

loan servicers. Utilization of the NMLS for licensing purposes would allow for efficiency and cost savings, however, RLD notes in order to be compatible with the NMLS system, the licensing period should begin November 1 and not be considered late until after December 31. As written, HB71 notes applications shall be filed on or before November 1 of the year in which the license expires and that licenses filed between November 1 and before December 31 would require a \$100 late fee—RLD notes this deadline is earlier than compatibility with the NMLS would direct.

RLD also notes “private education lender” or “lender” in the bill means any person engaged in the business of securing, making or extending private education loans or any holder of a private education loan.” It is not clear if a holder of a private education loan includes the holder of a tranche or portion of private student loans when the loans are packaged and sold on the market.

SOURCES OF INFORMATION

- LESC Files
- Regulation and Licensing Department
- Higher Education Department

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