

1 SENATE BILL 85

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

4 Bill Tallman

5  
6  
7  
8  
9  
10 AN ACT

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

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
16 cited as the "Student Loan Bill of Rights Act".

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

19 A. "director" means the director of the division;

20 B. "division" means the financial institutions  
21 division of the regulation and licensing department;

22 C. "servicing" means:

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

.209531.1

underscoring material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

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

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

7 D. "student education loan" means any loan  
8 primarily for personal use to finance education or other  
9 school-related expenses;

10 E. "student loan borrower" means:

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

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

16 F. "student loan servicer" means any person  
17 responsible for the servicing of student education loans to a  
18 student loan borrower.

19 SECTION 3. [NEW MATERIAL] STUDENT LOAN OMBUDSMAN--  
20 DUTIES--ANNUAL REPORT.--

21 A. The director shall designate a student loan  
22 ombudsman within the division to provide timely assistance to  
23 student loan borrowers.

24 B. The student loan ombudsman shall:

25 (1) receive, review and attempt to resolve

.209531.1

underscored material = new  
~~[bracketed material] = delete~~

1 complaints from student loan borrowers, including attempts to  
2 resolve student loan borrower complaints;

3 (2) compile and analyze data regarding student  
4 loan borrower complaints as described in Paragraph (1) of this  
5 subsection;

6 (3) assist student loan borrowers in  
7 understanding their rights and responsibilities under the terms  
8 of student education loans;

9 (4) provide information to the public, state  
10 agencies, state legislators and others regarding the problems  
11 and concerns of student loan borrowers and make recommendations  
12 for resolving those problems and concerns;

13 (5) analyze and monitor the development and  
14 implementation of federal, state and local laws, regulations  
15 and policies relating to student loan borrowers and make  
16 recommendations for any changes deemed necessary;

17 (6) review the complete student education loan  
18 history for any student loan borrower who has provided written  
19 consent for such review;

20 (7) disseminate information concerning the  
21 availability of the student loan ombudsman to assist student  
22 loan borrowers and potential student loan borrowers, public  
23 institutions of higher education, student loan servicers and  
24 other participants in student education loan lending with  
25 student loan servicing concerns; and

.209531.1

underscored material = new  
[bracketed material] = delete

1 (8) take any other actions deemed necessary to  
2 fulfill the duties of the student loan ombudsman as set forth  
3 in this subsection.

4 C. On or before July 1, 2019, the student loan  
5 ombudsman shall establish and maintain a student loan borrower  
6 education course that shall include educational presentations  
7 and materials regarding student education loans. Such program  
8 shall include key loan terms, documentation requirements,  
9 monthly payment obligations, income-based repayment options,  
10 loan forgiveness and disclosure requirements.

11 D. On or before January 1, 2020, and annually  
12 thereafter, the director shall submit a report to the  
13 legislature addressing the following:

14 (1) the implementation of the Student Loan  
15 Bill of Rights Act;

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

18 (3) additional steps that may need to be taken  
19 for the division to gain appropriate regulatory control over  
20 the licensing of student loan servicers and the enforcement of  
21 the provisions of the Student Loan Bill of Rights Act.

22 SECTION 4. [NEW MATERIAL] LICENSE REQUIRED--EXEMPTIONS.--

23 A. No person shall act directly or indirectly as a  
24 student loan servicer without first obtaining a license from  
25 the division pursuant to the Student Loan Bill of Rights Act,

.209531.1

underscoring material = new  
[bracketed material] = delete

1 unless such person is exempt from licensure pursuant to  
2 Subsection B of this section.

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

- 5 (1) a bank or credit union;
- 6 (2) a wholly owned subsidiary of a bank or  
7 credit union; and
- 8 (3) an operating subsidiary of a bank or  
9 credit union where each owner of the operating subsidiary is  
10 wholly owned by the same bank or credit union.

11 SECTION 5. [NEW MATERIAL] LICENSE APPLICATION--  
12 INVESTIGATION--LICENSE ISSUANCE.--

13 A. Any person seeking to act as a student loan  
14 servicer shall make a written application to the director for  
15 an initial license in such form as the director may prescribe.  
16 Such application shall be accompanied by:

- 17 (1) a financial statement prepared by a  
18 certified or registered public accountant, the accuracy of  
19 which is sworn to under oath before a notary public by the  
20 proprietor, a general partner or a corporate officer or a  
21 member duly authorized to execute such documents;
- 22 (2) the history of criminal convictions of  
23 the:
  - 24 (a) applicant;
  - 25 (b) partners, if the applicant is a

underscoring material = new  
~~[bracketed material] = delete~~

1 partnership;

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

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

6 (3) sufficient information pertaining to the  
7 history of criminal convictions of the applicant, partners,  
8 members, officers, directors or principal employees as the  
9 director deems necessary to make the findings required pursuant  
10 to Subsection D of this section;

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

13 (5) a nonrefundable investigation fee of eight  
14 hundred dollars (\$800).

15 B. Upon the filing of an application for an initial  
16 license and the payment of required fees, the director shall  
17 investigate the financial condition and responsibility, the  
18 financial and business experience and the character and general  
19 fitness of the applicant.

20 C. The director may conduct a state and national  
21 criminal history records check of the applicant and of each  
22 partner, member, officer, director and principal employee of  
23 the applicant.

24 D. The director shall issue a license for a student  
25 loan servicer pursuant to the Student Loan Bill of Rights Act

.209531.1

underscoring material = new  
~~[bracketed material] = delete~~

1 if the director finds that:

2 (1) the applicant's financial condition is  
3 sound;

4 (2) the applicant's business will be conducted  
5 honestly, fairly, equitably, carefully and efficiently within  
6 the purposes and intent of the Student Loan Bill of Rights Act  
7 and in a manner commanding the confidence and trust of the  
8 community;

9 (3) no person on behalf of the applicant  
10 knowingly has made any incorrect statement of a material fact  
11 in the application or in any report or statement made pursuant  
12 to the Student Loan Bill of Rights Act;

13 (4) no person on behalf of the applicant has  
14 knowingly omitted to state any material fact necessary to give  
15 the director any information lawfully required by the director  
16 pursuant to the Student Loan Bill of Rights Act;

17 (5) the applicant has paid the license fee and  
18 investigation fee required pursuant to Paragraphs (4) and (5)  
19 of Subsection A of this section; and

20 (6) the applicant has met all other  
21 requirements as determined by the director; and if the  
22 applicant is:

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

25 (b) a partnership, that each partner is

.209531.1

underscored material = new  
[bracketed material] = delete

1 in all respects properly qualified and of good character;

2 (c) a corporation or association, that  
3 the president, chair of the executive committee, senior officer  
4 responsible for the corporation's business and chief financial  
5 officer or any other person who performs similar functions as  
6 determined by the director, each director, each trustee and  
7 each shareholder owning ten percent or more of each class of  
8 the securities of such corporation are in all respects properly  
9 qualified and of good character; or

10 (d) a limited liability company, that  
11 each member is in all respects properly qualified and of good  
12 character.

13 SECTION 6. [NEW MATERIAL] LICENSE EXPIRATION--LICENSE  
14 SURRENDER--LICENSE RENEWAL--LICENSE SUSPENSION--INFORMATION  
15 UPDATE--LICENSE ABANDONMENT--NO ABATEMENT OF FEES.--

16 A. A license issued pursuant to Section 5 of the  
17 Student Loan Bill of Rights Act shall expire at the close of  
18 business on September 30 of the odd-numbered year following its  
19 issuance, unless renewed or earlier surrendered, suspended or  
20 revoked pursuant to the Student Loan Bill of Rights Act.

21 B. Not later than fifteen days after a licensee  
22 ceases to engage in the business of student loan servicing in  
23 New Mexico for any reason, including a business decision to  
24 terminate operations in New Mexico, license revocation,  
25 bankruptcy or voluntary dissolution, the licensee shall provide

.209531.1



underscoring material = new  
~~[bracketed material] = delete~~

1 written notice of surrender to the director and shall surrender  
2 to the director its license for each location in which such  
3 licensee has ceased to engage in the business of student loan  
4 servicing. The written notice of surrender shall identify the  
5 location where the records of the licensee will be stored and  
6 the name, address and telephone number of an individual  
7 authorized to provide access to the records. The surrender of  
8 a license does not reduce or eliminate the licensee's civil or  
9 criminal liability arising from acts or omissions occurring  
10 prior to the surrender of the license, including any  
11 administrative actions undertaken by the director to revoke or  
12 suspend a license, assess a civil penalty, order restitution or  
13 exercise any other authority provided to the director pursuant  
14 to the Student Loan Bill of Rights Act.

15 C. A license may be renewed for the ensuing twenty-  
16 four-month period upon the filing of an application containing  
17 all required documents and fees as required by Subsection A of  
18 Section 5 of the Student Loan Bill of Rights Act. Such renewal  
19 application shall be filed on or before September 1 of the year  
20 in which the license expires. Any renewal application filed  
21 with the director after September 1 of the year in which the  
22 license expires shall be accompanied by a one-hundred-dollar  
23 (\$100) late fee, and any such filing shall be deemed to be  
24 timely. If an application for a renewal license has been filed  
25 with the director on or before the date the license expires,

.209531.1

underscoring material = new  
~~[bracketed material] = delete~~

1 the license sought to be renewed shall continue in full force  
2 and effect until the issuance by the director of the renewal  
3 license applied for or until the director has notified the  
4 licensee in writing of the director's refusal to issue such  
5 renewal license, together with the grounds upon which such  
6 refusal is based. The director may refuse to issue a renewal  
7 license on any ground on which the director might refuse to  
8 issue an initial license.

9 D. If the director determines a check filed with  
10 the director to pay a renewal fee has been dishonored, the  
11 director shall automatically suspend the license or the renewal  
12 license that has been issued but is not yet effective. The  
13 director shall give the licensee notice of the automatic  
14 suspension pending proceedings for revocation or refusal to  
15 renew and an opportunity for a hearing on such actions.

16 E. The applicant or licensee shall notify the  
17 director, in writing, of any change in the information provided  
18 in its initial application for a license or its most recent  
19 renewal application for such license, as applicable, not later  
20 than ten business days after the occurrence of the event that  
21 results in such information becoming inaccurate.

22 F. The director may deem an application for a  
23 license abandoned if the applicant fails to respond to any  
24 request for information required pursuant to the Student Loan  
25 Bill of Rights Act or any regulations adopted pursuant to that

.209531.1

underscoring material = new  
~~[bracketed material] = delete~~

1 act. The director shall notify the applicant, in writing, that  
2 if the applicant fails to submit such information not later  
3 than sixty days after the date on which such request for  
4 information was made, the application shall be deemed  
5 abandoned. An application filing fee paid prior to the date an  
6 application is deemed abandoned pursuant to this subsection  
7 shall not be refunded. Abandonment of an application pursuant  
8 to this subsection shall not preclude the applicant from  
9 submitting a new application for a license pursuant to the  
10 Student Loan Bill of Rights Act.

11 G. No abatement of the license fee shall be made if  
12 the license is surrendered, revoked or suspended prior to the  
13 expiration of the period for which it was issued.

14 SECTION 7. [NEW MATERIAL] LICENSEE NAMES AND LOCATIONS--  
15 TRANSFERABILITY--ASSIGNABILITY.--

16 A. No person licensed as a student loan servicer  
17 shall service student education loans under a name or at a  
18 place of business than that as named in the license. Any  
19 change of location of a place of business of a licensee shall  
20 require prior written notice to the director. Not more than  
21 one place of business shall be maintained under the same  
22 license, but the director may issue more than one license to  
23 the same licensee upon compliance with the provisions of the  
24 Student Loan Bill of Rights Act.

25 B. A license for a student loan servicer shall not

.209531.1

underscored material = new  
[bracketed material] = delete

1 be transferable or assignable.

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

3 A. A student loan servicer licensee, and persons  
4 exempt from licensure pursuant to Subsection B of Section 4 of  
5 the Student Loan Bill of Rights Act, shall maintain adequate  
6 records of each student education loan transaction for not less  
7 than two years following the final payment on a student  
8 education loan or the assignment of a student education loan,  
9 whichever occurs first, or such longer period as may be  
10 required by the director.

11 B. If requested by the director, a student loan  
12 servicer shall make student education loan records available to  
13 the director, or shall send student education loan records to  
14 the director by registered or certified mail, return receipt  
15 requested, or by any express delivery carrier that provides a  
16 dated delivery receipt, not later than five business days after  
17 requested by the director to do so. Upon request, the director  
18 may grant a licensee additional time to make such records  
19 available or send the records to the director.

20 SECTION 9. [NEW MATERIAL] PROHIBITED ACTS--UNFAIR TRADE  
21 PRACTICE.--

22 A. A student loan servicer shall not:  
23 (1) directly or indirectly employ any scheme,  
24 device or artifice intended to defraud or mislead student loan  
25 borrowers;

.209531.1

underscored material = new  
~~[bracketed material] = delete~~

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

8 (3) obtain property by fraud or  
9 misrepresentation;

10 (4) knowingly misapply or recklessly apply  
11 student education loan payments to the outstanding balance of a  
12 student education loan;

13 (5) knowingly or recklessly provide inaccurate  
14 information to a credit bureau, thereby harming a student loan  
15 borrower's creditworthiness;

16 (6) fail to report both the favorable and  
17 unfavorable payment history of the student loan borrower to a  
18 nationally recognized consumer credit bureau at least annually  
19 if the student loan servicer regularly reports information to a  
20 credit bureau;

21 (7) refuse to communicate with an authorized  
22 representative of a student loan borrower who provides a  
23 written authorization signed by the student loan borrower;  
24 provided that the student loan servicer may adopt procedures  
25 reasonably related to verifying that the representative is in

.209531.1

underscored material = new  
[bracketed material] = delete

1 fact authorized to act on behalf of the student loan borrower;  
2 or

3 (8) negligently make any false statement or  
4 knowingly and wilfully make any omission of a material fact in  
5 connection with any information or reports filed with a  
6 governmental agency or in connection with any investigation  
7 conducted by the director or another governmental agency.

8 B. A violation of Subsection A of this section  
9 constitutes an unfair or deceptive trade practice pursuant to  
10 the Unfair Practices Act.

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

12 A. The director has the authority to conduct  
13 investigations and examinations for purposes of initial  
14 licensing, license renewal, license suspension, license  
15 revocation or termination, or for general or specific inquiry  
16 or investigation, to determine compliance with the Student Loan  
17 Bill of Rights Act. The director may access, receive and use  
18 any books, accounts, records, files, documents, information or  
19 evidence, including:

20 (1) criminal, civil and administrative history  
21 information;

22 (2) personal history and experience  
23 information, including independent credit reports obtained from  
24 a consumer reporting agency described in Section 603(p) of the  
25 federal Fair Credit Reporting Act, 15 U.S.C. 1681a; and

.209531.1

underscoring material = new  
~~[bracketed material] = delete~~

1 (3) any other documents, information or  
2 evidence the director deems relevant to the inquiry or  
3 investigation regardless of the location, possession, control  
4 or custody of such documents, information 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 any student loan servicer  
9 licensee or person subject to said sections as often as  
10 necessary in order to carry out the purposes of said sections.  
11 The director may direct, subpoena or order the attendance of  
12 and examine under oath all persons whose testimony may be  
13 required about the student education loan or the business or  
14 subject matter of any such examination or investigation and may  
15 direct, subpoena or order such person to produce books,  
16 accounts, records, files and any other documents the director  
17 deems relevant to the inquiry.

18 C. In making any examination or investigation  
19 authorized by the Student Loan Bill of Rights Act, the director  
20 may control access to any documents and records of the student  
21 loan servicer licensee or person under examination or  
22 investigation. The director may take possession of the  
23 documents and records or place a person in exclusive charge of  
24 the documents and records in the place where they are usually  
25 kept. During the period of control, no person shall remove or

.209531.1

underscoring material = new  
~~[bracketed material] = delete~~

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

10 D. In order to fulfill the duties imposed by this  
11 section and to carry out the purposes of this section, the  
12 director 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 in  
19 order to improve efficiencies and reduce regulatory burden by  
20 sharing resources, standardized or uniform methods or  
21 procedures and documents, records, information or evidence  
22 obtained under 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

.209531.1



underscored material = new  
[bracketed material] = delete

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 such 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. No student loan servicer licensee or person  
18 subject to investigation or examination under this section may  
19 knowingly withhold, abstract, remove, mutilate, destroy or  
20 secrete any books, records, computer records or other  
21 information.

22 SECTION 11. [NEW MATERIAL] ENFORCEMENT BY DIRECTOR.--

23 A. In order to ensure the effective supervision and  
24 enforcement of the Student Loan Bill of Rights Act, the  
25 director may:

.209531.1

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

5                   (2) deny, suspend, revoke or decline to renew  
6 a license if an applicant or student loan servicer:

7                   (a) fails at any time to meet the  
8 requirements of Subsection D of Section 5 of the Student Loan  
9 Bill of Rights Act; or

10                   (b) withholds information or makes a  
11 material misstatement in an application for a license or  
12 renewal of a license;

13                   (3) order restitution against a student loan  
14 servicer for violations of the Student Loan Bill of Rights Act;

15                   (4) impose fines on a student loan servicer  
16 pursuant to Subsections C and D of this section;

17                   (5) order or direct such other affirmative  
18 action as the director deems necessary;

19                   (6) bar or suspend a student loan servicer  
20 from licensure in New Mexico as a student loan servicer; and

21                   (7) issue orders or directives pursuant to the  
22 Student Loan Bill of Rights Act as follows:

23                   (a) order or direct student loan  
24 servicers to cease and desist from conducting business,  
25 including issuing an immediate temporary order to cease and

underscored material = new  
[bracketed material] = delete

1 desist;

2 (b) order or direct student loan  
3 servicers to cease any harmful activities or violations of the  
4 Student Loan Bill of Rights Act, including issuing an immediate  
5 temporary order to cease and desist; and

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

12 B. The director may impose a civil penalty on a  
13 student loan servicer if the director finds, on the record  
14 after notice and opportunity for hearing, that the student loan  
15 servicer has violated or failed to comply with any requirement  
16 of the Student Loan Bill of Rights Act or any rule promulgated  
17 by the director pursuant to that act or any order issued  
18 pursuant to authority of that act.

19 C. The maximum amount of penalty for each act or  
20 omission described in this section shall be five thousand  
21 dollars (\$5,000).

22 D. Each violation or failure to comply with any  
23 directive or order of the director is a separate and distinct  
24 violation or failure.

25 SECTION 12. [NEW MATERIAL] NOTICE OF CONTEMPLATED

.209531.1

underscoring material = new  
~~[bracketed material]~~ = delete

1 ACTION--HEARINGS.--

2 A. When the director contemplates taking any action  
3 specified in Section 11 of the Student Loan Bill of Rights Act,  
4 the director shall serve upon the applicant or licensed student  
5 loan servicer a written notice containing a statement:

6 (1) that the director has sufficient evidence  
7 that, if not rebutted or explained, will justify the director  
8 in taking the contemplated action;

9 (2) indicating the general nature of the  
10 evidence; and

11 (3) that unless the applicant or licensed  
12 student loan servicer within twenty days after service of the  
13 notice deposits in the mail a certified return receipt  
14 requested letter addressed to the director containing a request  
15 for a hearing, the director will take the contemplated action.

16 B. If the applicant or licensed student loan  
17 servicer does not mail a request for a hearing within the time  
18 and in the manner required by this section, the director may  
19 take the action contemplated in the notice, and such action  
20 shall be final and not subject to judicial review.

21 C. If the applicant or licensed student loan  
22 servicer mails a request for a hearing as required by this  
23 section, the director shall, within thirty days of receipt of  
24 the request, notify the applicant or licensed student loan  
25 servicer of the time and place of the hearing, the name of the

.209531.1

underscored material = new  
[bracketed material] = delete

1 person who shall conduct the hearing for the director and the  
2 statutes and regulations authorizing the director to take the  
3 contemplated action.

4 SECTION 13. [NEW MATERIAL] JUDICIAL ENFORCEMENT.--

5 A. Upon a showing by the director that a person has  
6 violated, or is about to violate, the Student Loan Bill of  
7 Rights Act or any rule or order of the director pursuant to  
8 that act, the district court of the first judicial district or  
9 other appropriate district court in the state may grant or  
10 impose one or more of the following appropriate legal or  
11 equitable remedies:

12 (1) a temporary restraining order, permanent  
13 or temporary prohibitory or mandatory injunction or a writ of  
14 prohibition or mandamus;

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

17 (3) declaratory judgment;

18 (4) restitution to student loan borrowers;

19 (5) recovery by the director of all costs and  
20 expenses for conducting an investigation or the bringing of any  
21 enforcement action under the Student Loan Bill of Rights Act;  
22 or

23 (6) other relief as the court deems just.

24 B. In determining the appropriate relief to grant,  
25 the court shall consider enforcement actions taken and

underscored material = new  
[bracketed material] = delete

1 sanctions imposed by the director pursuant to Section 11 of the  
2 Student Loan Bill of Rights Act in connection with the  
3 transactions constituting violations of that act.

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

6 SECTION 14. [NEW MATERIAL] CRIMINAL PENALTIES.--

7 A. An individual who acts as a student loan  
8 servicer without being properly licensed pursuant to the  
9 Student Loan Bill of Rights Act is, for a first offense, guilty  
10 of a misdemeanor and upon conviction shall be sentenced in  
11 accordance with the provisions of Subsection A of Section  
12 31-19-1 NMSA 1978.

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

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

20 SECTION 15. [NEW MATERIAL] COMPLIANCE WITH FEDERAL LAW.--

21 A student loan servicer shall comply with all applicable  
22 federal laws and regulations relating to student loan  
23 servicing, including the Truth in Lending Act, 15 U.S.C.  
24 Section 1601 et seq., as amended, and the regulations  
25 promulgated thereunder. In addition to any other remedies

.209531.1

underscoring material = new  
[bracketed material] = delete

1 provided by law, a violation of any such federal law or  
2 regulation shall be deemed a violation of the Student Loan Bill  
3 of Rights Act and a basis upon which the director may take  
4 enforcement action pursuant to Section 11 of the Student Loan  
5 Bill of Rights Act.

6 SECTION 16. [NEW MATERIAL] PROMULGATION OF RULES.--The  
7 director shall make reasonable rules necessary for the  
8 implementation of the Student Loan Bill of Rights Act; provided  
9 that promulgated rules shall be subject to judicial review in  
10 the manner set forth in Section 12-8-8 NMSA 1978.

11 SECTION 17. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is January 1, 2019.