

Amend **HB 3851** on third reading (committee report) by adding the following new section and renumbering remaining sections accordingly:

SECTION __. Subtitle A, Title 3, Education Code, is amended by adding Chapter 57A to read as follows:

CHAPTER 57A. STANDARDS OF CONDUCT APPLICABLE TO EDUCATIONAL LOAN PRACTICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 57A.01. DEFINITIONS. In this chapter:

(1) "Affiliated entity" means an alumni association, booster club, or other organization recognized by or affiliated with a postsecondary educational institution as an official organization of the institution.

(2) "Educational loan" means:

(A) any loan made, insured, or guaranteed under Title IV, Higher Education Act of 1965 (Pub. L. No. 89-329); or

(B) a private loan provided by an educational loan lender that:

(i) is not made, insured, or guaranteed under Title IV, Higher Education Act of 1965 (Pub. L. No. 89-329); and

(ii) is issued by the lender to a student or the parent of a student expressly for postsecondary educational expenses, regardless of whether the loan involves enrollment certification by the postsecondary educational institution that the student attends.

(3) "Educational loan lender" means a person whose primary business is:

(A) making, brokering, arranging, or accepting applications for educational loans; or

(B) engaging in a combination of activities described by Paragraph (A).

(4) "Gift" means any gratuity, favor, discount, entertainment, hospitality, or other item having a monetary value of more than \$20. The term includes:

(A) any service, transportation, lodging, or meal; and

(B) a gift provided in kind, by purchase of a ticket, through payment in advance, or through reimbursement after expenses have been incurred.

(5) "Postsecondary educational expenses" means any of the expenses that are included as part of a student's "cost of attendance," as defined by Section 472, Higher Education Act of 1965 (Pub. L. No. 89-329).

(6) "Postsecondary educational institution" means any educational institution, public or private, that offers a degree, certificate, or program of study beyond that offered in secondary school. The term includes:

(A) an institution of higher education, as defined by Section 61.003; and

(B) a private or independent institution of higher education, as defined by Section 61.003.

(7) "Revenue sharing" means any arrangement under which an educational loan lender pays a postsecondary educational institution or affiliated entity a percentage of the principal of educational loans directed toward the lender from a borrower for postsecondary educational expenses related to attending the institution, other than an arrangement permitted under Title IV, Higher Education Act of 1965 (Pub. L. No. 89-329).

Sec. 57A.02. GENERAL PROVISIONS RELATING TO GIFTS.

(a) For purposes of this chapter, a gift to the family member of an employee of a postsecondary educational institution who is related to the employee within the second degree by consanguinity or affinity, as determined under Subchapter B, Chapter 573, Government Code, is considered to be a gift to the employee if the employee knowingly acquiesces in the giving of the gift and the employee has reason to believe the gift is being given because of the employee's official position as an employee.

(b) A provision of this chapter prohibiting an action regarding a gift to an employee of a postsecondary educational institution does not apply to a gift that consists of:

(1) standard informational material related to a loan such as a brochure;

(2) food, refreshments, training, or informal

material furnished to the employee as an integral part of a training session or through the employee's participation in an advisory council that is designed to improve the educational loan lender's services to the institution, if that training or participation contributes to the professional development of the employee; or

(3) favorable terms, conditions, or borrower benefits on an educational loan provided to the employee as a student of a postsecondary educational institution.

Sec. 57A.03. EXCEPTION FROM APPLICABILITY OF CHAPTER.

(a) In this chapter, the term "educational loan lender" does not include:

(1) the Texas Guaranteed Student Loan Corporation; or

(2) the coordinating board.

(b) This chapter does not apply to the relationship between the Texas Guaranteed Student Loan Corporation or the coordinating board and:

(1) a postsecondary educational institution; or

(2) an employee of a postsecondary educational institution.

Sec. 57A.04. CONFLICT WITH FEDERAL LAW. This chapter does not prohibit or affect any action authorized under Title IV, Higher Education Act of 1965 (Pub. L. No. 89-329), or other federal law. If a provision of this chapter and a provision of federal law, including a regulation, or an interpretation of federal law by an agency authorized to interpret or administer that federal law, are inconsistent or in conflict, federal law or interpretation controls and the inconsistent or conflicting provision of this chapter does not apply.

[Sections 57A.05-57A.20 reserved for expansion]

SUBCHAPTER B. STANDARDS OF CONDUCT APPLICABLE TO EDUCATIONAL LOAN LENDERS, POSTSECONDARY EDUCATIONAL INSTITUTIONS, AFFILIATED ENTITIES, AND CERTAIN EMPLOYEES

Sec. 57A.21. PROHIBITION AGAINST REVENUE SHARING. (a) An educational loan lender and a postsecondary educational institution or affiliated entity may not engage in revenue sharing.

(b) An arrangement permitted under Title IV, Higher Education Act of 1965 (Pub. L. No. 89-329), that would constitute

revenue sharing if not permitted under that title may not provide consideration to a postsecondary educational institution or affiliated entity in exchange for a benefit provided to the educational loan lender by the institution or entity unless that benefit is authorized by that title.

Sec. 57A.22. PROHIBITION AGAINST CERTAIN ACTIVITIES BY EDUCATIONAL LOAN LENDERS. An educational loan lender may not:

(1) offer or provide a gift to a postsecondary educational institution, an affiliated entity, or an employee of a postsecondary educational institution or affiliated entity who is employed in a capacity in which the employee oversees financial aid matters at the institution or entity or advises students or potential students of the institution on financial aid matters, except that the lender may offer or provide a scholarship or other charitable donation to the institution, entity, or employee if the scholarship or donation is not made in exchange for the institution, entity, or employee:

(A) recommending the lender to students or potential students of the institution who are seeking an educational loan or other financial aid; or

(B) providing any other special treatment or consideration to the lender;

(2) provide any remuneration to an employee of a postsecondary educational institution or affiliated entity for service on an advisory board to the lender, except that the lender may reimburse the employee for reasonable and necessary expenses incurred by the employee in serving on an advisory board in accordance with any applicable ethics policies adopted by the Texas Ethics Commission; or

(3) allow an employee, representative, or agent of the lender to represent to any borrower or prospective borrower that the employee, representative, or agent is an employee, representative, or agent of a postsecondary educational institution.

Sec. 57A.23. PROHIBITION AGAINST SOLICITATION OR ACCEPTANCE OF CERTAIN GIFTS. (a) A postsecondary educational institution, an affiliated entity, or an employee of a

postsecondary educational institution or affiliated entity who is employed in a capacity in which the employee oversees financial aid matters at the institution or entity or advises students or potential students of the institution on financial aid matters may not solicit or accept any gift from an educational loan lender in exchange for the institution, entity, or employee recommending the lender to students or potential students of the institution who are seeking an educational loan or other financial aid.

(b) This section does not prohibit a postsecondary educational institution, an affiliated entity, or an employee of a postsecondary educational institution or affiliated entity from soliciting or accepting a scholarship or other charitable donation from an educational loan lender that is not made in exchange for the institution, entity, or employee:

(1) recommending the lender to students or potential students of the institution who are seeking an educational loan or other financial aid; or

(2) providing any other special treatment or consideration to the lender.

Sec. 57A.24. PROHIBITION AGAINST MISLEADING IDENTIFICATION OF LENDER EMPLOYEES AND REPRESENTATIVES. An employee, representative, or agent of an educational loan lender may not represent to any person that the employee, representative, or agent is a member of the staff of a financial aid office of a postsecondary educational institution.

Sec. 57A.25. DISCLOSURE OF EDUCATIONAL LOAN INFORMATION ON REQUEST OF INSTITUTION. (a) Except as provided by Subsection (c), on the request of a postsecondary educational institution, an educational loan lender shall disclose to the institution, to the extent reasonably ascertainable:

(1) the historic default rates of the lender's educational loans made to borrowers who attend or attended the institution;

(2) the rates of interest charged to borrowers from the institution in the year preceding the year of the disclosure;

(3) the number of borrowers obtaining each rate of interest described by Subdivision (2); and

(4) the methods by which the lender processes educational loan applications.

(b) On request of a student or other person, a postsecondary educational institution shall disclose to the person information obtained by the institution under Subsection (a).

(c) This section does not apply to an educational loan funded, insured, or guaranteed by the federal government.

Sec. 57A.26. DISCLOSURE OF OWNERSHIP INTEREST IN EDUCATIONAL LOAN LENDER BY CERTAIN INSTITUTION EMPLOYEES. (a) In this section, "dependent child" means a child, including an adopted child or stepchild, who is an individual's dependent child for purposes of Section 572.006, Government Code.

(b) Each employee of a financial aid office of a postsecondary educational institution shall file with the institution in the manner prescribed by the institution a disclosure statement indicating whether the employee or the employee's spouse or dependent child owns any shares of stock or holds another ownership interest in an educational loan lender.

(c) The disclosure statement must be filed on the date the employee begins employment with the financial aid office and must be supplemented not later than the fifth business day after the date on which the employee or the employee's spouse or dependent child later acquires any stock or other ownership interest in an educational loan lender.

(c-1) An employee who is employed in a financial aid office of a postsecondary educational institution on January 1, 2008, shall file a disclosure statement as required by this section not later than February 1, 2008. This subsection expires September 1, 2008.

(d) The disclosure statement must indicate the name of the educational loan lender in which the employee, spouse, or dependent child, as applicable, owns any stock or holds any other ownership interest and the number of shares of stock held or the amount, percentage, value, or other reasonable description of the other ownership interest, as applicable.

(e) The head of a financial aid office of the postsecondary educational institution must review and sign each disclosure

statement filed by an employee of the office, except that any statement filed by the head of the financial aid office must be reviewed and signed by the president of the institution. The disclosure statements must be maintained in the financial aid office.

(f) This section does not require the disclosure of any ownership of shares in a publicly traded mutual fund or similar investment vehicle in which the person does not exercise any discretion regarding the investment of the assets of the fund or other investment vehicle.

(g) An employee who knowingly fails to file a disclosure statement as required by this section is subject to disciplinary action, including termination.

[Sections 57A.27-57A.40 reserved for expansion]

SUBCHAPTER C. REQUIREMENTS RELATING TO LENDER LISTS

Sec. 57A.41. REQUIREMENTS RELATING TO LENDER LISTS. (a) A postsecondary educational institution may make available a list of one or more recommended or suggested educational loan lenders for use in any form by borrowers or prospective borrowers who attend or have indicated an intent to attend the institution or members of the public, but the institution may not use the term "preferred" in the name of the list or in reference to the list. If a postsecondary educational institution makes available to borrowers or prospective borrowers a lender list described by this subsection, the institution must ensure that the list:

(1) discloses the process by which the institution has selected educational loan lenders for inclusion on the list, including the methods and criteria used to choose the lenders and the relative importance of the criteria;

(2) states, in the same font size and same manner as the predominant text on the document, that a borrower has the right and ability to select the educational loan lender of the borrower's choice, is not required to use any of the lenders on the list, and will not be penalized for selecting a lender that is not on the list, although the time required to obtain a loan may vary depending on the lender selected; and

(3) is periodically reviewed and updated.

(b) An educational loan lender against whom a penalty has been assessed under this chapter may be placed or remain on a postsecondary educational institution's lender list only if notice of the penalty is provided to all borrowers and prospective borrowers who attend or have indicated an intent to attend the institution.

[Sections 57A.42-57A.60 reserved for expansion]

SUBCHAPTER D. ENFORCEMENT; PENALTIES

Sec. 57A.61. CIVIL PENALTY. (a) An educational loan lender, postsecondary educational institution, or affiliated entity that violates a provision of this chapter is liable for a civil penalty not to exceed \$25,000 for each violation.

(b) The attorney general may bring suit to recover a civil penalty under this section. In determining the amount of a penalty to be recovered, the attorney general shall consider the nature and severity of the violation.

Sec. 57A.62. CRIMINAL OFFENSES. (a) An employee of a postsecondary educational institution or affiliated entity who intentionally or knowingly violates Section 57A.23 prohibiting an action regarding a gift commits a criminal offense.

(b) An offense under Subsection (a) is:

(1) a Class B misdemeanor if the value of the gift is \$20 or more but less than \$500;

(2) a Class A misdemeanor if the value of the gift is \$500 or more but less than \$1,500;

(3) a state jail felony if the value of the gift is \$1,500 or more but less than \$20,000;

(4) a felony of the third degree if the value of the gift is \$20,000 or more but less than \$100,000;

(5) a felony of the second degree if the value of the gift is \$100,000 or more but less than \$200,000; or

(6) a felony of the first degree if the value of the gift is \$200,000 or more.

(c) A person who intentionally or knowingly violates Section 57A.24 commits a criminal offense. An offense under this subsection is a Class B misdemeanor.

(d) If conduct that constitutes an offense under this

section also constitutes an offense under other law, the actor may
be prosecuted under this section or the other law.

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