

BILL ANALYSIS

Senate Research Center
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S.B. 2047
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S/C on Higher Education
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

It has been recently discovered that student loan companies and institution of higher education are engaging in questionable practices while referring students to student loan lenders. There have been recent developments which have shown that there has been an exchange of gifts and other things that may have been taken into consideration when universities compile preferred lender lists. Students need to be able to trust that these preferred lender lists are being compiled in their best interest and not based on gifts given to the university.

As proposed, S.B. 2047 provides rules and regulations for the student loan industry and public or private institutions of higher education (institutions) who refer students to certain loan companies. This bill creates a standard of ethics that prohibits institutions from accepting gifts or remuneration for services to the lending company and also prohibits lenders from offering these gifts. This bill prohibits both entities from revenue sharing agreements.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Higher Education Coordinating Board in SECTION 1 (Section 57A.02, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle A, Title 3, Education Code, by adding Chapter 57A, as follows:

CHAPTER 57A. STANDARD OF CONDUCT APPLICABLE TO STUDENT LOAN PRACTICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 57A.01. DEFINITIONS. Defines "borrower," "coordinating board," "employee of a public or private institution of higher education," "gift," "high risk student loan agreement," "high risk student loan," "higher education expenses," "preferred lender list," "public or private institution of higher education," "revenue sharing," "student loan," and "student loan lender."

Sec. 57A.02. RULES. Authorizes the Texas Higher Education Coordinating Board (THECB) to adopt rules for the administration of this chapter.

[Reserves Sections 57A.03-57A.20 for expansion.]

SUBCHAPTER B. STANDARDS OF CONDUCT APPLICABLE TO STUDENT LOAN LENDERS

Sec. 57A.21. PROHIBITION AGAINST OFFERING OR MAKING GIFTS TO INSTITUTIONS AND INSTITUTION EMPLOYEES. Prohibits a student loan lender from, directly or indirectly, offering or providing any gift to a public or private institution of higher education (institution) or an employee of an institution in exchange for any advantage or consideration provided to the lender related to the lender's student loan activities.

Sec. 57A.22. PROHIBITION AGAINST REMUNERATION OF INSTITUTION EMPLOYEE FOR SERVICE ON LENDER ADVISORY BOARD. Prohibits a student loan lender from providing to an employee of an institution any remuneration for or reimbursement of expenses for serving as a member of or other participant in an advisory board of the lender.

Sec. 57A.23. PROHIBITION AGAINST REVENUE SHARING WITH INSTITUTION. Prohibits a student loan lender from engaging in revenue sharing with an institution.

Sec. 57A.24. PROHIBITION AGAINST STAFFING ARRANGEMENTS WITH INSTITUTIONS. Prohibits an employee, representative, or agent of a student loan lender from acting as a member of the staff of a financial aid office of an institution.

Sec. 57A.25. PROHIBITION AGAINST MISLEADING IDENTIFICATION OF LENDER EMPLOYEES AND REPRESENTATIVES. Prohibits a student loan lender from allowing an employee, representative, or agent of the lender to be identified to borrowers or prospective borrowers as an employee, representative, or agent of an institution.

Sec. 57A.26. PROHIBITION AGAINST HIGH RISK STUDENT LOAN AGREEMENTS. Prohibits a student loan lender from entering into a high risk student loan agreement with an institution in exchange for the institution providing concessions or promises to the lender that may prejudice borrowers or prospective borrowers of student loans.

Sec. 57A.27. DISCLOSURE OF STUDENT LOAN INFORMATION ON REQUEST OF INSTITUTION. (a) Requires a student loan lender, on the request of an institution, to disclose certain information to the institution in reasonable detail and form, except as provided by Subsection (b).

(b) Provides that this section does not apply to a student loan made, insured, or guaranteed by the federal government.

[Reserves Sections 57A.28-57A.40 for expansion.]

SUBCHAPTER C. STANDARDS OF CONDUCT APPLICABLE TO INSTITUTIONS OF HIGHER EDUCATION AND THEIR EMPLOYEES

Sec. 57A.41. PROHIBITION AGAINST SOLICITATION OR ACCEPTANCE OF GIFTS BY INSTITUTION. Prohibits an institution from, directly or indirectly, soliciting or accepting any gift from or on behalf of a student loan lender in exchange for any advantage or consideration provided to the lender related to the lender's student loan activities.

Sec. 57A.42. PROHIBITION AGAINST SOLICITATION OR ACCEPTANCE OF GIFTS BY INSTITUTION EMPLOYEE. (A) Prohibits an employee of an institution from, on the employee's own behalf or on behalf of another person, directly or indirectly, soliciting or accepting any gift from or on behalf of a student loan lender.

(b) Provides that this section does not prohibit an employee of an institution from conducting business with a student loan lender, provided that the business is unrelated in any manner to the activities, programs, or other business of the institution.

(c) Requires an employee of an institution to promptly report to THECB any instance of a student loan lender attempting to offer or provide a gift to the employee.

Sec. 57A.43. PROHIBITION AGAINST REVENUE SHARING WITH LENDER. Prohibits an institution from engaging in revenue sharing with a student loan lender.

Sec. 57A.44. PROHIBITION AGAINST ACCEPTANCE OF REMUNERATION BY INSTITUTION EMPLOYEE FOR SERVICE ON LENDER ADVISORY BOARD. (a) Prohibits an employee of an institution from accepting any remuneration or reimbursement of expenses for serving as a member of or other participant in an advisory board of a student loan lender.

(b) Provides that this section does not prohibit a certain employee's participation on an advisory board or serving on the board of directors of a publicly traded or privately held business entity.

(c) Requires an employee of an institution who is directly involved with, or benefits from, the functions of the institution's financial aid office to report to THECB, in a form and manner prescribed by the THECB, any participation by the employee or financial interest of the employee related to a student loan lender.

Sec. 57A.45. PROHIBITION AGAINST MISLEADING IDENTIFICATION OF LENDER EMPLOYEES AND REPRESENTATIVES. Prohibits an institution from identifying an employee, representative, or agent of a student loan lender to borrowers or prospective borrowers as an employee, representative, or agent of the institution.

Sec. 57A.46. PROHIBITION AGAINST HIGH RISK STUDENT LOAN AGREEMENTS. Prohibits an institution from entering into a high risk student loan agreement with a student loan lender under which the institution provides concessions or promises to the student loan lender that may prejudice borrowers or prospective borrowers.

Sec. 57A.47. PROHIBITION AGAINST DIRECTING POTENTIAL BORROWERS TO CERTAIN ELECTRONIC LOAN AGREEMENTS. Prohibits an institution from directing in any manner a potential borrower who attends or has indicated an intent to attend the institution to an electronic master promissory note or other loan agreement that does not allow the borrower to enter the lender code or name for any student loan lender offering the relevant loan.

Sec. 57A.48. DISCLOSURE OF FINANCING OPTIONS REQUIRED. Requires an institution to inform a borrower or prospective borrower who attends or has indicated an intent to attend the institution of all available financing options under Title IV, Higher Education Act of 1965 Pub. L. No. 89-329), including information on any terms and conditions of available loans under that title that are more favorable to the borrower, before a student loan lender with which the institution has a student loan arrangement may provide a student loan to the borrower.

[Reserves Sections 57A.49-57A.60 for expansion.]

SUBCHAPTER D. REQUIREMENTS RELATING TO PREFERRED LENDER LISTS

Sec. 57A.61. REQUIREMENTS RELATING TO PREFERRED LENDER LIST. (a) Requires an institution that provides or makes available to students or prospective students a preferred lender list (list) to ensure that the list discloses the methods and criteria used to choose the lenders, makes a specific statements regarding the right of the borrower, and is reviewed and updated at least annually.

(b) Authorizes an institution's decision to include a student loan lender on a list and authorizes the decision regarding where the name of the lender appears to be determined solely by consideration of the best interests of the prospective borrowers who many use the list without regard to the pecuniary interests of the institution.

(c) Authorizes an institution to include a student loan lender on the institution's list only if the lender provides assurance to the institution and to borrowers that the advertised benefits on loan repayment will continue to benefit the borrowers regardless of whether the lender's loans are sold.

(d) Requires an institution, before including a student loan lender on a list, to make a reasonable inquiry regarding whether the lender has an agreement to sell its loans to another unaffiliated lender. Authorizes the institution, if, after making reasonable inquiry, it has knowledge of such an agreement, to include the lender on the institution's list only if the existence and general nature of the agreement are disclosed on the list in the same font size and the same manner as the predominant text on the document.

(e) Prohibits a student loan lender from being placed on an institution's list or being provided favored placement on an institution's list for a particular type of loan in exchange for benefits provided to the institution or to students of the institution in connection with a different type of loan.

(f) Authorizes a student loan lender against whom a penalty has been assessed under this chapter to be placed or remain on an institution's 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.

[Reserves Sections 57A.62-57A.80 for expansion.]

SUBCHAPTER E. ENFORCEMENT; PENALTIES

Sec. 57A.81. CIVIL PENALTY. (a) Provides that a student loan lender or an institution that violates a provision of this chapter is liable for a civil penalty not to exceed \$50,000 for each violation.

(b) Provides that an employee of an institution that violates a provision of this chapter is liable for a civil penalty not to exceed \$7,500 for each violation.

(c) Authorizes the attorney general to bring suit to recover a civil penalty under this section. Requires the attorney general, in determining the amount of a penalty to be recovered, to consider the nature and severity of the violation.

SECTION 2. Effective date: upon passage or September 1, 2007.