

BILL ANALYSIS

Senate Research Center
80R21607 KSD-D

C.S.S.B. 2049
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Education
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Some ban companies and institutions of higher education have come under recent scrutiny for ethically questionable practices that have not been in the best interest of students seeking financial aid.

C.S.S.B. 2049 prohibits loan companies from sharing revenue from student loans with institutions of higher education. The bill prohibits these companies from offering gifts to the institution in exchange for the institution's recommendation of the lender to students and from providing payment to an institution employee for service on a lender advisory board. The bill prohibits school officials from accepting any payment for service on such a board.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

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

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 57A.01. DEFINITIONS. Defines "affiliated entity," "educational ban" (loan), "educational loan lender" (lender), "gift," "postsecondary educational expenses," "postsecondary educational institution" (institution), and "revenue sharing."

Sec. 57A.02. GENERAL PROVISIONS RELATING TO GIFTS. (a) Provides that, for purposes of this chapter, a gift to the family member of an employee of an institution who is related to the employee within the second degree by consanguinity or affinity, as determined under Subchapter B (Relationships by Consanguinity or by Affinity), 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) Provides that a provision of this chapter prohibiting an action regarding a gift to an employee of a postsecondary institution does not apply to certain gifts set forth in this subsection.

Sec. 57A.03. EXCEPTION FROM APPLICABILITY OF CHAPTER. (a) Provides that the term "educational loan lender" does not include the Texas Guaranteed Student Loan Corporation (corporation) or the Texas Higher Education Coordinating Board (THECB).

(b) Provides that this chapter does not apply to a relationship between the corporation or THECB and an institution or institution employee.

Sec. 57A.04. CONFLICT WITH FEDERAL LAW. Provides that 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. Provides that 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 administer or interpret that law, are inconsistent or in conflict, the federal law or interpretation controls and the inconsistent or conflicting or conflicting provision of this chapter does not apply.

[Reserves Sections 57A.05-57A.20 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) Prohibits a lender and an institution or affiliated entity (affiliate) from engaging in revenue sharing.

(b) Prohibits an arrangement permitted under the federal Higher Education Act of 1965 (Pub. L. No. 89-329) that would constitute revenue sharing if not permitted under that title from providing consideration to an institution or affiliate in exchange for a benefit provided to the lender by the institution or affiliate unless the benefit is authorized by that title.

Sec. 57A.22. PROHIBITION AGAINST CERTAIN ACTIVITIES BY EDUCATIONAL LOAN LENDERS. Prohibits a lender from offering or providing a gift to an institution, affiliate, or an institution or affiliate employee employed in a capacity in which the employee oversees financial aid matters at the institution or affiliate or advises students or potential students of the institution on financial aid matters (financial aid employee), from providing any remuneration to such an employee for service on an advisory board to the lender, or from allowing an employee, representative, or agent of the lender to represent to any borrower or prospective borrower that the person is an employee, representative, or agent of an institution. Sets forth certain exceptions to such prohibitions.

Sec. 57A.23. PROHIBITION AGAINST SOLICITATION OR ACCEPTANCE OF CERTAIN GIFTS. (a) Prohibits an institution, affiliate, or financial aid employee from soliciting or accepting any gift from a lender in exchange for the institution, affiliate, or employee recommending the lender to students of the institution who are seeking an educational loan or other financial aid.

(b) Provides that this section does not prohibit an institution, affiliate, or an institution or affiliate employee from soliciting or accepting a scholarship or other charitable donation from a lender that is not made in exchange for a recommendation or special treatment as set forth in this subsection.

Sec. 57A.24. PROHIBITION AGAINST MISLEADING IDENTIFICATION OF LENDER EMPLOYEES AND REPRESENTATIVES. Prohibits an employee, representative, or agent of a lender from representing to any borrower or prospective borrower that the person is a staff member of an institution's financial aid office.

Sec. 57A.25. DISCLOSURE OF EDUCATIONAL LOAN INFORMATION ON REQUEST OF INSTITUTION. (a) Requires a lender, on the request of an institution, to disclose certain information set forth in this subsection to the institution to the extent reasonably ascertainable, except as provided by Subsection (c).

(b) Requires an institution, on request of a student or other person, to disclose to the person information obtained by the institution under Subsection (a).

(c) Provides that this section does not apply to a 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) Defines “dependent child.”

(b) Requires each financial aid employee to file with the institution in the manner prescribed by the institution a disclosure statement (statement) indicating whether the employee or the employee’s spouse or dependent child owns any shares of stock or holds another ownership interest in a lender.

(c) Requires the statement to be filed on the date the employee begins employment with the financial aid office and to be supplemented not later than the fifth business day after the date on which any of the persons indicated in Subsection (b) acquires any stock or other ownership interest in a lender.

(c-1) Requires a financial aid employee who is employed by the institution on January 1, 2008, to file a statement as required by this subsection not later than February 1, 2008. Provides that this subsection expires September 1, 2008.

(d) Requires the statement to indicate the name of the lender in which the persons indicated in Subsection (b) 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, if applicable.

(e) Requires the head of an institution’s financial aid office to review and sign each statement filed by an employee, except that any statement filed by the head of the financial aid office is required to be reviewed and signed by the institution’s president. Requires the statement to be maintained in the financial aid office.

(f) Provides that this section does not require the disclosure of any kind of 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) Provides that an employee who knowingly fails to file a disclosure statement as required by this section is subject to disciplinary action, including termination.

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

SUBCHAPTER C. REQUIREMENTS RELATING TO LENDER LISTS

Sec. 57A.41. REQUIREMENTS RELATING TO LENDER LISTS. (a) Authorizes an institution to make available a list of one or more recommended or suggested lenders for use in any form by borrowers or prospective borrowers who attend or have indicated an intent to attend the institution (borrowers) or members of the public, but prohibits the institution from using the term “preferred” in the name of or in reference to the list. Requires the institution, if it makes such a list available, to ensure that the list meets certain conditions and is reviewed and updated as set forth in this subsection.

(b) Authorizes a lender against whom a penalty has been assessed under this chapter to be placed on the 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.42-57A.60 for expansion.]

SUBCHAPTER D. ENFORCEMENT; PENALTIES

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

(b) 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.

Sec. 57A.62. CRIMINAL OFFENSES. (a) Provides that an employee of an institution or an affiliate who intentionally or knowingly violates Section 57A.23 prohibiting an action regarding a gift commits a criminal offense.

(b) Sets forth the levels of offense for an offense under Subsection (a), contingent upon the monetary value of the gift.

(c) Provides that a person who intentionally or knowingly violates Section 57A.24 commits a Class B misdemeanor criminal offense.

(d) Authorizes an actor, if the actor's conduct constitutes an offense under this section and under other law, to be prosecuted under this section or the other law.

SECTION 2. Effective date: January 1, 2008.