

By: West, Royce

S.B. No. 2047

A BILL TO BE ENTITLED

AN ACT

relating to requirements and prohibitions regarding the relationship between student loan lenders and public or private institutions of higher education; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 3, Education Code, is amended by adding Chapter 57A to read as follows:

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

SUBCHAPTER A. GENERAL PROVISIONS

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

(1) "Borrower" means a person who obtains a student loan from a student loan lender to pay higher education expenses incurred by the person or by another person to whom the person is related.

(2) "Coordinating board" means the Texas Higher Education Coordinating Board.

(3) "Employee of a public or private institution of higher education" includes any employee, agent, contractor, director, officer, or trustee of the institution.

(4) "Gift" means any discount, favor, gratuity, inducement, loan, stock, thing of value, or other item having a monetary value of more than \$10. The term:

(A) includes:

1 (i) any money, service, loan,
2 entertainment, honoraria, hospitality, lodging costs, meal,
3 registration fee, travel expense, discount, forbearance, or
4 promise;

5 (ii) a gift provided in kind, by purchase of
6 a ticket, through payment in advance, or through reimbursement
7 after expenses have been incurred;

8 (iii) any computer hardware for which the
9 recipient pays a below-market price; and

10 (iv) any printing costs or services; and

11 (B) does not include:

12 (i) a student loan lender's own brochure or
13 promotional literature; or

14 (ii) food, refreshments, training, or
15 informational material furnished to an employee of an institution
16 of higher education as an integral part of a training session, if
17 that training session contributes to the professional development
18 of the employee.

19 (5) "High risk student loan agreement" means any
20 agreement between a student loan lender and a public or private
21 institution under which the lender provides student loans to
22 students of the institution who have a poor credit history or no
23 credit history and who would not otherwise be eligible for a student
24 loan.

25 (6) "High risk student loan" means a student loan made
26 pursuant to a high risk student loan agreement.

27 (7) "Higher education expenses" includes:

1 (A) tuition and fees charged by a public or
2 private institution of higher education; and

3 (B) costs incurred in connection with attending a
4 public or private institution of higher education for room, board,
5 books, supplies, transportation, and miscellaneous personal
6 expenses.

7 (8) "Preferred lender list" means a list of one or more
8 recommended or suggested student loan lenders that a public or
9 private institution of higher education makes available for use, in
10 print or any other medium or form, by borrowers or prospective
11 borrowers who attend or have indicated an intent to attend the
12 institution or members of the public.

13 (9) "Public or private institution of higher
14 education" means:

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

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

19 (10) "Revenue sharing" means any arrangement under
20 which a student loan lender pays a public or private institution of
21 higher education or an affiliated entity or organization of the
22 institution a percentage of the principal of student loans directed
23 toward the lender from a borrower for higher education expenses
24 related to attending the institution.

25 (11) "Student loan" means:

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

1 as amended;

2 (B) a high risk student loan; or

3 (C) any private loan issued by a student loan
4 lender that requires all or part of the loan proceeds to be used to
5 assist a person in paying higher education expenses.

6 (12) "Student loan lender" means:

7 (A) any person whose primary business,
8 independently or through an affiliate is:

9 (i) making, brokering, arranging, or
10 accepting applications for student loans; or

11 (ii) a combination of activities described
12 by Subparagraph (i);

13 (B) any entity or association of entities that
14 guarantees student loans; or

15 (C) any industry, trade, or professional
16 association or other entity that receives money from any entity or
17 association of entities described by Paragraph (A) or (B).

18 Sec. 57A.02. RULES. The coordinating board may adopt rules
19 for the administration of this chapter.

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

21 SUBCHAPTER B. STANDARDS OF CONDUCT APPLICABLE TO STUDENT LOAN

22 LENDERS

23 Sec. 57A.21. PROHIBITION AGAINST OFFERING OR MAKING GIFTS
24 TO INSTITUTIONS AND INSTITUTION EMPLOYEES. A student loan lender
25 may not, directly or indirectly, offer or provide any gift to a
26 public or private institution of higher education or an employee of
27 a public or private institution of higher education in exchange for

1 any advantage or consideration provided to the lender related to
2 the lender's student loan activities.

3 Sec. 57A.22. PROHIBITION AGAINST REMUNERATION OF
4 INSTITUTION EMPLOYEE FOR SERVICE ON LENDER ADVISORY BOARD. A
5 student loan lender may not provide to an employee of a public or
6 private institution of higher education any remuneration for or
7 reimbursement of expenses for serving as a member of or other
8 participant in an advisory board of the lender.

9 Sec. 57A.23. PROHIBITION AGAINST REVENUE SHARING WITH
10 INSTITUTION. A student loan lender may not engage in revenue
11 sharing with a public or private institution of higher education.

12 Sec. 57A.24. PROHIBITION AGAINST STAFFING ARRANGEMENTS
13 WITH INSTITUTIONS. An employee, representative, or agent of a
14 student loan lender may not act as a member of the staff of a
15 financial aid office of a public or private institution of higher
16 education.

17 Sec. 57A.25. PROHIBITION AGAINST MISLEADING IDENTIFICATION
18 OF LENDER EMPLOYEES AND REPRESENTATIVES. A student loan lender may
19 not allow an employee, representative, or agent of the lender to be
20 identified to borrowers or prospective borrowers as an employee,
21 representative, or agent of a public or private institution of
22 higher education.

23 Sec. 57A.26. PROHIBITION AGAINST HIGH RISK STUDENT LOAN
24 AGREEMENTS. A student loan lender may not enter into a high risk
25 student loan agreement with a public or private institution of
26 higher education in exchange for the institution providing
27 concessions or promises to the lender that may prejudice borrowers

1 or prospective borrowers of student loans.

2 Sec. 57A.27. DISCLOSURE OF STUDENT LOAN INFORMATION ON
3 REQUEST OF INSTITUTION. (a) Except as provided by Subsection (b),
4 on the request of a public or private institution of higher
5 education, a student loan lender shall disclose to the institution,
6 in reasonable detail and form:

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

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

12 (3) the number of borrowers obtaining each rate of
13 interest described by Subdivision (2).

14 (b) This section does not apply to a student loan made,
15 insured, or guaranteed by the federal government.

16 [Sections 57A.28-57A.40 reserved for expansion]

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

19 Sec. 57A.41. PROHIBITION AGAINST SOLICITATION OR
20 ACCEPTANCE OF GIFTS BY INSTITUTION. A public or private
21 institution of higher education may not, directly or indirectly,
22 solicit or accept any gift from or on behalf of a student loan
23 lender in exchange for any advantage or consideration provided to
24 the lender related to the lender's student loan activities.

25 Sec. 57A.42. PROHIBITION AGAINST SOLICITATION OR
26 ACCEPTANCE OF GIFTS BY INSTITUTION EMPLOYEE. (a) An employee of a
27 public or private institution of higher education may not, on the

1 employee's own behalf or on behalf of another person, directly or
2 indirectly, solicit or accept any gift from or on behalf of a
3 student loan lender.

4 (b) This section does not prohibit an employee of a public
5 or private institution of higher education from conducting business
6 with a student loan lender, provided that the business is unrelated
7 in any manner to the activities, programs, or other business of the
8 institution.

9 (c) An employee of a public or private institution of higher
10 education shall promptly report to the coordinating board any
11 instance of a student loan lender attempting to offer or provide a
12 gift to the employee.

13 Sec. 57A.43. PROHIBITION AGAINST REVENUE SHARING WITH
14 LENDER. A public or private institution of higher education may not
15 engage in revenue sharing with a student loan lender.

16 Sec. 57A.44. PROHIBITION AGAINST ACCEPTANCE OF
17 REMUNERATION BY INSTITUTION EMPLOYEE FOR SERVICE ON LENDER ADVISORY
18 BOARD. (a) An employee of a public or private institution of
19 higher education may not accept any remuneration or reimbursement
20 of expenses for serving as a member of or other participant in an
21 advisory board of a student loan lender.

22 (b) This section does not prohibit:

23 (1) an employee's participation on an advisory board
24 of a student loan lender that is unrelated in any manner to student
25 loans; or

26 (2) an employee who does not have a direct interest in
27 or does not benefit from the functions of the institution's

1 financial aid office from serving on the board of directors of a
2 publicly traded or privately held business entity.

3 (c) An employee of a public or private institution of higher
4 education who is directly involved with, or benefits from, the
5 functions of the institution's financial aid office shall report to
6 the coordinating board, in a form and manner prescribed by the
7 coordinating board, any participation by the employee or financial
8 interest of the employee related to a student loan lender.

9 Sec. 57A.45. PROHIBITION AGAINST MISLEADING IDENTIFICATION
10 OF LENDER EMPLOYEES AND REPRESENTATIVES. A public or private
11 institution of higher education may not identify an employee,
12 representative, or agent of a student loan lender to borrowers or
13 prospective borrowers as an employee, representative, or agent of
14 the institution.

15 Sec. 57A.46. PROHIBITION AGAINST HIGH RISK STUDENT LOAN
16 AGREEMENTS. A public or private institution of higher education
17 may not enter into a high risk student loan agreement with a student
18 loan lender under which the institution provides concessions or
19 promises to the student loan lender that may prejudice borrowers or
20 prospective borrowers.

21 Sec. 57A.47. PROHIBITION AGAINST DIRECTING POTENTIAL
22 BORROWERS TO CERTAIN ELECTRONIC LOAN AGREEMENTS. A public or
23 private institution of higher education may not direct in any
24 manner a potential borrower who attends or has indicated an intent
25 to attend the institution to an electronic master promissory note
26 or other loan agreement that does not allow the borrower to enter
27 the lender code or name for any student loan lender offering the

1 relevant loan.

2 Sec. 57A.48. DISCLOSURE OF FINANCING OPTIONS REQUIRED. A
3 public or private institution of higher education shall inform a
4 borrower or prospective borrower who attends or has indicated an
5 intent to attend the institution of all available financing options
6 under Title IV, Higher Education Act of 1965 (Pub. L. No. 89-329),
7 including information on any terms and conditions of available
8 loans under that title that are more favorable to the borrower,
9 before a student loan lender with which the institution has a
10 student loan arrangement may provide a student loan to the
11 borrower.

12 [Sections 57A.49-57A.60 reserved for expansion]

13 SUBCHAPTER D. REQUIREMENTS RELATING TO PREFERRED LENDER LISTS

14 Sec. 57A.61. REQUIREMENTS RELATING TO PREFERRED LENDER
15 LIST. (a) A public or private institution of higher education that
16 provides or makes available to students or prospective students of
17 the institution a preferred lender list must ensure that the list:

18 (1) discloses the process by which the institution has
19 selected student loan lenders for inclusion in the list, including
20 the methods and criteria used to choose the lenders and the relative
21 importance of the criteria;

22 (2) states, in the same font size and same manner as
23 the predominant text on the document, that a borrower has the right
24 and ability to select the student loan lender of the borrower's
25 choice, is not required to use any of the lenders on the list, and
26 will not be penalized for selecting a lender that is not on the
27 list; and

1 (3) is reviewed and updated at least annually.

2 (b) A public or private institution of higher education's
3 decision to include a student loan lender on a preferred lender list
4 and the institution's decision regarding where on the preferred
5 lender list the student loan lender's name appears may be
6 determined solely by consideration of the best interests of the
7 borrowers or prospective borrowers who may use the list without
8 regard to the pecuniary interests of the institution.

9 (c) A public or private institution of higher education may
10 include a student loan lender on the institution's preferred lender
11 list only if the lender provides assurance to the institution and to
12 borrowers of the lender that the advertised benefits on loan
13 repayment will continue to benefit the borrowers regardless of
14 whether the lender's loans are sold.

15 (d) Before including a student loan lender on a preferred
16 lender list, a public or private institution of higher education
17 shall make a reasonable inquiry regarding whether the lender has an
18 agreement to sell its loans to another unaffiliated lender. If,
19 after making reasonable inquiry, the institution has knowledge of
20 such an agreement, the institution may include the lender on the
21 institution's preferred lender list only if the existence and
22 general nature of the agreement are disclosed on the preferred
23 lender list in the same font size and same manner as the predominant
24 text on the document.

25 (e) A student loan lender may not be placed on a public or
26 private institution of higher education's preferred lender list or
27 be provided favored placement on an institution's preferred lender

1 list for a particular type of loan in exchange for benefits provided
2 to the institution or to students of the institution in connection
3 with a different type of loan.

4 (f) A student loan lender against whom a penalty has been
5 assessed under this chapter may be placed or remain on a public or
6 private institution of higher education's preferred lender list
7 only if notice of the penalty is provided to all borrowers and
8 prospective borrowers who attend or have indicated an intent to
9 attend the institution.

10 [Sections 57A.62-57A.80 reserved for expansion]

11 SUBCHAPTER E. ENFORCEMENT; PENALTIES

12 Sec. 57A.81. CIVIL PENALTY. (a) A student loan lender or a
13 public or private institution of higher education that violates a
14 provision of this chapter is liable for a civil penalty not to
15 exceed \$50,000 for each violation.

16 (b) An employee of a public or private institution of higher
17 education that violates a provision of this chapter is liable for a
18 civil penalty not to exceed \$7,500 for each violation.

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

23 SECTION 2. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2007.