

LAWS OF NEW YORK, 2007

CHAPTER 41

AN ACT to amend the education law, in relation to protecting students and parents from being steered by lenders and institutions of higher learning into student loans laden with conflicts of interest; and to amend the state finance law, in relation to establishing the student lending education account

Became a law May 29, 2007, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The education law is amended by adding a new article 13-B to read as follows:

ARTICLE 13-B
STUDENT LENDING ACCOUNTABILITY,
TRANSPARENCY AND ENFORCEMENT ACT

Section 620. Definitions.

621. Prohibition of gifts made by lending institutions to covered institutions and their employees.

622. Prohibition of receipt of gifts by covered institutions.

623. Prohibition of receipt of gifts by covered institution employees.

624. Covered institution employee prohibitions and reporting requirements.

625. Misleading identification of lending institutions' employees.

626. Loan disclosure and prohibition of quid pro quo high risk loans.

627. Standards for preferred lender lists.

628. Proper execution of master promissory notes.

629. Disclosures at request of covered institutions.

630. Penalties.

631. Rules and regulations.

632. Non-exclusivity of rights or remedies.

§ 620. Definitions. As used in this article, the following terms shall have the following meanings unless otherwise specified:

1. "Borrower" shall mean a student attending a covered institution in this state, or a parent or person in parental relation to such student, who also obtains an educational loan from a lending institution to pay for or finance higher education expenses.

2. "Covered institution" shall mean any college, vocational institution, or approved program as defined in section six hundred one of this title.

3. "Covered institution employee" shall mean any employee, agent, contractor, director, officer or trustee of a covered institution.

4. "Educational loan" shall mean any loan that is made, insured, or guaranteed under Part B of Title IV of the Federal Higher Education Act of nineteen hundred sixty-five, as amended, any high risk loan or any

EXPLANATION--Matter in **italics** is new; matter in brackets [-] is old law to be omitted.

private loan issued by a lending institution for the purposes of paying for or financing higher education expenses.

5. "Gift" shall mean any discount, favor, gratuity, inducement, loan, stock, thing of value, or other item having more than nominal value.

a. The term "gift" shall include, but is not limited to:

(1) Any money, service, loan, entertainment, honoraria, hospitality, lodging costs, meals, registration fees, travel expenses, discount, forbearance or promise;

(2) Gifts provided in kind, by purchase of a ticket, payment in advance, or reimbursement after expenses have been incurred;

(3) Any computer hardware for which the recipient pays below-market prices;

(4) Any printing costs or services.

b. The term "gift" shall not include any of the following:

(1) A lending institution's own brochure or promotional literature;

(2) Food, refreshments, training, or informational material furnished to a covered institution employee as an integral part of a training session, if such training contributes to the professional development of the covered institution employee.

c. Nothing in this article shall be construed to affect the private philanthropic activities of banks or other lending institutions that are unrelated to educational loans.

6. "High risk loans" shall mean any agreement between a lending institution and a covered institution that provides for the lending institution to provide loans to students with a poor or no credit history, who would otherwise not be eligible for educational loans.

7. "Higher education expenses" shall include the following:

a. tuition and fees;

b. costs incurred for books, supplies, transportation, and miscellaneous personal expenses; and

c. room and board costs.

8. "Lending institution" shall mean:

a. any entity that itself or through an affiliate makes educational loans to pay for or finance higher education expenses or that securitizes such loans;

b. any entity, or association of entities, that guarantees educational loans; or

c. any industry, trade or professional association or other entity that receives money, related to educational loan activities, from any entity described above in paragraphs a and b of this subdivision.

9. "Preferred lender list" shall mean a list of one or more recommended or suggested lending institutions that a covered institution makes available for use, in print or any other medium or form, by borrowers, potential borrowers or others.

10. "Revenue sharing" shall mean any arrangement whereby a lending institution pays a covered institution or an affiliated entity or organization of such covered institution a percentage of the principal of each loan directed towards the lending institution from a borrower at the covered institution.

§ 621. Prohibition of gifts made by lending institutions to covered institutions and their employees. 1. A lending institution may not, directly or indirectly, offer or provide any gift to a covered institution or a covered institution employee, in exchange for any advantage or consideration provided to such lending institution related to its educa-

2. A lending institution may not engage in revenue sharing with a covered institution.

§ 622. Prohibition of receipt of gifts by covered institutions. 1. A covered institution may not, directly or indirectly, solicit, accept or receive any gift from or on behalf of a lending institution, in exchange for any advantage or consideration provided to such lending institution related to its educational loan activities.

2. A covered institution may not engage in revenue sharing with a lending institution.

§ 623. Prohibition of receipt of gifts by covered institution employees. 1. A covered institution shall require that no covered institution employee on his or her own behalf or on behalf of another, directly or indirectly, solicits, accepts or receives any gift from or on behalf of a lending institution. Nothing in this section shall be construed as prohibiting a covered institution employee from conducting business with a lending institution, provided that such business is unrelated in any manner whatsoever to a covered institution.

2. A covered institution employee, on his or her own behalf or on behalf of another, shall not directly or indirectly solicit, accept or receive any gift from or on behalf of a lending institution. Nothing in this section shall be construed as prohibiting a covered institution employee from conducting business with any lending institution, provided that such business is unrelated in any manner whatsoever with the covered institution.

3. Covered institution employees shall report to the department any instance of a lending institution attempting to give a gift to such covered institution employees.

§ 624. Covered institution employee prohibitions and reporting requirements. 1. A lending institution shall require that no covered institution employee receives any remuneration for serving as a member or participant of an advisory board of a lending institution or receives any reimbursement of expenses for so serving.

2. A covered institution shall require that no covered institution employee of such covered institution receives any remuneration for serving as a member or participant of an advisory board of a lending institution or receives any reimbursement of expenses for so serving.

3. Nothing in this section shall be construed as prohibiting:

a. a covered institution employee's participation on an advisory board of a lending institution that is unrelated in any manner whatsoever to educational loans; or

b. a covered institution employee, who does not have a direct interest in or does not benefit from the functions of the covered institution's financial aid office, from serving on a board of directors of a publicly traded or privately held company.

4. Covered institution employees who are directly involved with or benefit from the functions of the covered institution's financial aid office shall be required to report to the department, in a form and manner prescribed by the department, all participation or financial interests related to any lending institution.

§ 625. Misleading identification of lending institutions' employees.

1. A lending institution shall require that no employee or agent of such lending institution is identified to borrowers or potential borrowers of a covered institution as an employee, representative or agent of

such covered institution.

2. A covered institution shall require that no employee or agent of a lending institution is identified to borrowers or potential borrowers of

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such covered institution as an employee, representative or agent of such covered institution.

3. No employee, representative or agent of a lending institution may staff a covered institution's financial aid offices.

§ 626. Loan disclosure and prohibition of quid pro quo high risk loans. 1. Should a borrower or potential borrower consult a covered institution's financial aid office in connection with obtaining an educational loan to pay for or finance higher education expenses, the covered institution shall inform the borrower or potential borrower of all available financing options under Title IV of the Federal Higher Education Act of nineteen hundred sixty-five, as amended, including information on any terms and conditions of available loans under such title that are more favorable to the borrower, before a lending institution may provide a private educational loan to a borrower attending a covered institution.

2. A lending institution shall not enter into an agreement or otherwise provide any high risk loans, in exchange for the covered institution providing concessions or promises to the lending institution that may prejudice other borrowers or potential borrowers.

3. A covered institution shall not enter into an agreement or otherwise provide any high risk loans, in exchange for the covered institution providing concessions or promises to the lending institution that may prejudice other borrowers or potential borrowers.

§ 627. Standards for preferred lender lists. A covered institution that provides or makes available a preferred lender list must comply with the following standards:

1. A preferred lender list must disclose the process by which the covered institution selected lending institutions for such preferred lender list, including, but not limited to, the method and criteria used to choose the lending institutions and the relative importance of those criteria;

2. A preferred lender list must state in the same font size and same manner as the predominant text on the document that borrowers have the right and ability to select the education loan provider of their choice, are not required to use any of the lenders on such preferred lender list, and will suffer no penalty for choosing a lender that is not on such preferred lender list;

3. The covered institution's decision to include a lending institution on any preferred lender list and the covered institution's decision as to where on the preferred lender list the lending institution's name appears shall be determined solely by consideration of the best interests of the borrowers who may use such preferred lender list without regard to the pecuniary interests of the covered institution;

4. The contents of any preferred lender list shall be reviewed and updated no less than annually;

5. No lending institution shall be placed on a preferred lender list unless such lending institution provides assurance to the covered institution and to borrowers who take out loans from such lending institution that the advertised benefits upon repayment will continue to inure to the benefit of borrowers regardless of whether the lending institution's loans are sold;

6. No lending institution that, to the covered institution's knowledge after reasonable inquiry, has an agreement to sell its loans to another unaffiliated lending institution shall be included on a preferred lender list unless such agreement is disclosed therein in the same font size

and same manner as the predominant text on the document in which the preferred lender list appears;

7. No lending institution shall be placed on a covered institution's preferred lender lists or in favored placement on a covered institution's preferred lender lists for a particular type of loan, in exchange for benefits provided to the covered institution or to the covered institution's students in connection with a different type of loan.

§ 628. Proper execution of master promissory notes. A covered institution shall not direct in any manner whatsoever potential borrowers to any electronic master promissory notes or other loan agreements that do not provide a reasonable and convenient alternative for the borrower to complete a master promissory note with any federally approved lending institution offering the relevant loan in this state.

§ 629. Disclosures at request of covered institutions. Except for educational loans made, insured, or guaranteed by the federal government, upon the request of any covered institution, a lending institution shall disclose to such covered institution, in reasonable detail and form, the historic default rates of the borrowers from such covered institution, and the rates of interest charged to borrowers from such covered institution in the year preceding the disclosures and the number of borrowers obtaining each rate of interest.

§ 630. Penalties. 1. If after providing notice and an opportunity for a hearing the department determines that a covered institution or lending institution has violated any terms or provisions of this article, then the covered institution or lending institution may be liable for a civil penalty. Regardless of the department's determination that a covered institution or lending institution is liable for a single violation or a series of violations under this article, the maximum penalty shall not exceed fifty thousand dollars. In taking action against a covered institution or lending institution, consideration shall be given to the nature and severity of violations of this article.

2. If after providing notice and an opportunity for a hearing the department determines that a covered institution employee has violated any terms or provisions of this article, then the covered institution employee may be liable for a civil penalty. Regardless of the department's determination that a covered institution employee is liable for a single violation or a series of violations under this article, the maximum penalty shall not exceed seven thousand five hundred dollars. In taking action against a covered institution employee, consideration shall be given to the nature and severity of violations of this article.

3. If after providing notice and an opportunity for a hearing the department determines that a lending institution has violated a term or provision of this article, such lending institution shall not be placed or remain on any covered institution's preferred lender list unless notice of such violation is provided to all potential borrowers of the covered institution.

4. Nothing in this section shall prohibit the department from reaching a settlement agreement with a covered institution, covered institution employee or lending institution in order to effectuate the purposes of

this section. Provided, however, if such settlement agreement is reached with a covered institution or lending institution, the department shall provide notice of such action to all potential borrowers in a form and manner prescribed by the department.

5. The department shall deposit the funds generated from this section into the student lending education account, created by section ninety-
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seven-hhhh of the state finance law. Such funds shall be given to covered institutions upon application to the department for the purposes of:

a. Educating borrowers and potential borrowers on the educational loan process, including, but not limited to, available educational loan options, understanding rates and terms of student loans, managing costs and credit responsibilities, student loan repayment and loan consolidation; and

b. Reimbursing borrowers from inflated educational loan prices caused by revenue sharing agreements between such covered institution and a lending institution.

§ 631. Rules and regulations. The commissioner and the department shall promulgate rules and regulations necessary for the implementation of this article.

§ 632. Non-exclusivity of rights or remedies. Nothing in this article shall be construed to limit, in any manner, any rights or remedies otherwise available under law to any person or entity, including, but not limited to, the attorney general of the state of New York.

§ 2. The state finance law is amended by adding a new section 97-hhhh to read as follows:

§ 97-hhhh. The student lending education account. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance an account to be known as the student lending education account.

2. Such account shall consist of all revenues generated pursuant to section six hundred thirty of the education law and all other moneys credited or transferred thereto from any other fund or source pursuant to law.

3. Moneys of the account, following appropriation by the legislature shall be made available to the state education department for the purposes of: (a) supporting programs that educate students, potential students, and parents of such students on the educational loan process, including, but not limited to, available educational loan options, understanding rates and terms of student loans, managing costs and credit responsibilities, student loan repayment and loan consolidation; and (b) reimbursing students from inflated educational loan prices caused by revenue sharing agreements between such covered institution and a lending institution. Money shall be paid out of the account on the audit and warrant of the state comptroller on vouchers certified or approved by the state education department.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly