

Senate Study Bill 1360

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
GOVERNMENT OVERSIGHT BILL
BY CHAIRPERSON COURTNEY)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to student loans, including the protection of
2 students and parents from certain lenders and institutions of
3 higher education with conflicts of interest, and establishing
4 penalties and a student lending education fund.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 2939SC 82
7 kh/gg/14

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1 1 Section 1. NEW SECTION. 261E.1 DEFINITIONS.
1 2 As used in this chapter, unless otherwise specified:
1 3 1. "Administrator" means either the attorney general or
1 4 the attorney general's designee. The attorney general may
1 5 charge the college student aid commission or the
1 6 superintendent of banking, credit unions, or savings and loans
1 7 with enforcing this chapter against the person under
1 8 investigation.
1 9 2. "Borrower" means a student attending a covered
1 10 institution in this state, or a parent or person in parental
1 11 relation to such student, who also obtains an educational loan
1 12 from a lending institution to pay for or finance higher
1 13 education expenses.
1 14 3. "Covered institution" means any educational institution
1 15 that offers a postsecondary educational degree, certificate,
1 16 or program of study and receives state funding or assistance.
1 17 "Covered institution" includes an agent of the educational
1 18 institution, including an alumni association, booster club, or
1 19 other organization directly or indirectly associated with the
1 20 institution.
1 21 4. "Covered institution employee" means any employee,
1 22 agent, contractor, director, officer, or trustee of a covered
1 23 institution.
1 24 5. "Educational loan" means any loan that is made,
1 25 insured, or guaranteed under title IV of the federal Higher
1 26 Education Act of 1965, as amended, any high risk loan, or any
1 27 private loan issued by a lending institution for the purposes
1 28 of paying for or financing higher education expenses.
1 29 6. "Gift" means any discount, favor, gratuity, inducement,
1 30 loan, stock, thing of value, or other item having a monetary
1 31 value of more than ten dollars.
1 32 a. The term "gift" includes but is not limited to:
1 33 (1) Any money, service, loan, entertainment, honoraria,
1 34 hospitality, lodging costs, meals, registration fees, travel
1 35 expenses, discount, forbearance, or promise.
2 1 (2) Gifts provided in kind, by purchase of a ticket,
2 2 payment in advance, or reimbursement after expenses have been
2 3 incurred.
2 4 (3) Any computer hardware for which the recipient pays
2 5 below-market prices.
2 6 (4) Any printing costs or services.
2 7 b. The term "gift" does not include any of the following:
2 8 (1) A lending institution's own brochure or promotional
2 9 literature.
2 10 (2) Food, refreshments, training, or informational
2 11 material furnished to a covered institution employee as an
2 12 integral part of a training session, if such training
2 13 contributes to the professional development of the covered
2 14 institution employee.
2 15 7. "High risk loans" means any agreement between a lending
2 16 institution and a covered institution that provides for the

2 17 lending institution to provide loans to students with a poor
2 18 or no credit history, who would otherwise not be eligible for
2 19 educational loans.

2 20 8. "Higher education expenses" includes all of the
2 21 following:

2 22 a. Tuition and fees.

2 23 b. Costs incurred for books, supplies, transportation, and
2 24 miscellaneous personal expenses.

2 25 c. Room and board costs.

2 26 9. "Lending institution" means any of the following:

2 27 a. Any entity that itself or through an affiliate makes
2 28 educational loans to pay for or finance higher education
2 29 expenses or that securitizes such loans.

2 30 b. Any entity, or association of entities, that guarantees
2 31 educational loans.

2 32 c. Any industry, trade, or professional association or
2 33 other entity that receives money from any entity described in
2 34 paragraph "a" or "b".

2 35 10. "Preferred lender list" means a list of one or more
3 1 recommended or suggested lending institutions that a covered
3 2 institution makes available for use, in print or any other
3 3 medium or form, by borrowers, prospective borrowers, or
3 4 others.

3 5 11. "Revenue sharing" means any arrangement whereby a
3 6 lending institution pays a covered institution or an
3 7 affiliated entity or organization of such covered institution
3 8 a percentage of the principal of each loan directed towards
3 9 the lending institution from a borrower at the covered
3 10 institution.

3 11 Sec. 2. NEW SECTION. 261E.2 PROHIBITION OF GIFTS BY
3 12 LENDING INSTITUTIONS TO COVERED INSTITUTIONS AND EMPLOYEES.

3 13 1. A lending institution shall not, directly or
3 14 indirectly, offer or provide any gift to a covered institution
3 15 or a covered institution employee in exchange for any
3 16 advantage or consideration provided to such lending
3 17 institution related to its educational loan activities.

3 18 2. A lending institution shall not engage in revenue
3 19 sharing with a covered institution.

3 20 Sec. 3. NEW SECTION. 261E.3 PROHIBITION OF RECEIPT OF
3 21 GIFTS BY COVERED INSTITUTIONS.

3 22 1. A covered institution shall not, directly or
3 23 indirectly, solicit, accept, or receive any gift from or on
3 24 behalf of a lending institution in exchange for any advantage
3 25 or consideration provided to such lending institution related
3 26 to its educational loan activities.

3 27 2. A covered institution shall not engage in revenue
3 28 sharing with a lending institution.

3 29 Sec. 4. NEW SECTION. 261E.4 PROHIBITION OF RECEIPT OF
3 30 GIFTS BY COVERED INSTITUTION EMPLOYEES.

3 31 1. A covered institution shall prohibit a covered
3 32 institution employee, on the employee's behalf or on behalf of
3 33 another, directly or indirectly, from soliciting, accepting,
3 34 or receiving any gift from or on behalf of a lending
3 35 institution. Nothing in this subsection shall be construed as
4 1 prohibiting a covered institution employee from conducting
4 2 business with a lending institution, provided that such
4 3 business is unrelated in any manner whatsoever to a covered
4 4 institution.

4 5 2. A covered institution employee, on the employee's
4 6 behalf or on behalf of another, shall not directly or
4 7 indirectly solicit, accept, or receive any gift from or on
4 8 behalf of a lending institution. Nothing in this subsection
4 9 shall be construed as prohibiting a covered institution
4 10 employee from conducting business with any lending
4 11 institution, provided that such business is unrelated in any
4 12 manner whatsoever with the covered institution.

4 13 3. A covered institution employee shall report to the
4 14 administrator any instance of a lending institution attempting
4 15 to give a gift to the covered institution employee.

4 16 Sec. 5. NEW SECTION. 261E.5 COVERED INSTITUTION EMPLOYEE
4 17 PROHIBITIONS AND REPORTING REQUIREMENTS.

4 18 1. A lending institution shall not provide any
4 19 remuneration or expense reimbursement to a covered institution
4 20 employee for serving as a member of or participant on an
4 21 advisory board of a lending institution.

4 22 2. A covered institution shall prohibit a covered
4 23 institution employee from receiving any remuneration for
4 24 serving as a member of or participant on an advisory board of
4 25 a lending institution or receiving any reimbursement of
4 26 expenses for so serving, notwithstanding section 261.4.

4 27 3. Nothing in this section shall be construed as

4 28 prohibiting any of the following:

4 29 a. A covered institution employee's participation on an
4 30 advisory board of a lending institution that is unrelated in
4 31 any manner whatsoever to educational loans.

4 32 b. A covered institution employee, who does not have a
4 33 direct interest in or does not benefit from the functions of
4 34 the covered institution's financial aid office, from serving
4 35 on a board of directors of a publicly traded or privately held
5 1 company.

5 2 4. A covered institution employee who is directly involved
5 3 with or benefits from the functions of the covered
5 4 institution's financial aid office shall report to the
5 5 administrator, in a form and manner prescribed by the
5 6 administrator, all participation or financial interests
5 7 related to any lending institution.

5 8 Sec. 6. NEW SECTION. 261E.6 MISLEADING IDENTIFICATION OF
5 9 LENDING INSTITUTIONS' EMPLOYEES.

5 10 1. A lending institution shall prohibit an employee or
5 11 agent of the lending institution from being identified to
5 12 borrowers or prospective borrowers of a covered institution as
5 13 an employee, representative, or agent of the covered
5 14 institution.

5 15 2. A covered institution shall prohibit an employee or
5 16 agent of a lending institution from being identified as an
5 17 employee, representative, or agent of the covered institution.

5 18 3. An employee, representative, or agent of a lending
5 19 institution shall not staff a covered institution's financial
5 20 aid offices.

5 21 Sec. 7. NEW SECTION. 261E.7 LOAN DISCLOSURE AND
5 22 PROHIBITION OF QUID PRO QUO HIGH RISK LOANS.

5 23 1. A covered institution shall inform the borrower or
5 24 prospective borrower of all available state education
5 25 financing options, and financing options under title IV of the
5 26 federal Higher Education Act of 1965, as amended, including
5 27 information on any terms and conditions of available loans
5 28 under such title that are more favorable to the borrower,
5 29 before a lending institution may provide a private educational
5 30 loan to a borrower attending a covered institution with which
5 31 a lending institution has an educational loan arrangement.

5 32 2. Neither a lending institution nor a covered institution
5 33 shall enter into an agreement or otherwise provide any high
5 34 risk loans in exchange for the covered institution providing
5 35 concessions or promises to the lending institution that may
6 1 prejudice other borrowers or prospective borrowers.

6 2 Sec. 8. NEW SECTION. 261E.8 STANDARDS FOR PREFERRED
6 3 LENDER LISTS.

6 4 A covered institution that provides or makes available a
6 5 preferred lender list shall comply with all of the following
6 6 standards:

6 7 1. A preferred lender list shall disclose the process by
6 8 which the covered institution selected lending institutions
6 9 for such preferred lender list, including, but not limited to,
6 10 the method and criteria used to choose the lending
6 11 institutions and the relative importance of those criteria.

6 12 2. A preferred lender list shall state in the same font
6 13 size and same manner as the predominant text on the document
6 14 that borrowers have the right and ability to select the
6 15 education loan provider of their choice, are not required to
6 16 use any of the lenders on such preferred lender list, and will
6 17 suffer no penalty for choosing a lender that is not on such
6 18 preferred lender list.

6 19 3. The covered institution's decision to include a lending
6 20 institution on any preferred lender list and the covered
6 21 institution's decision as to where on the preferred lender
6 22 list the lending institution's name appears shall be
6 23 determined solely by consideration of the best interests of
6 24 the borrowers who may use such preferred lender list without
6 25 regard to the pecuniary interests of the covered institution.

6 26 4. The contents of any preferred lender list shall be
6 27 reviewed and updated at least annually.

6 28 5. A lending institution shall not be placed on a
6 29 preferred lender list unless the lending institution provides
6 30 assurance to the covered institution and to borrowers who take
6 31 out loans from the lending institution that the advertised
6 32 benefits upon repayment will continue to inure to the benefit
6 33 of borrowers regardless of whether the lending institution's
6 34 loans are sold.

6 35 6. A lending institution that, to the covered
7 1 institution's knowledge after reasonable inquiry, has an
7 2 agreement to sell its loans to another unaffiliated lending
7 3 institution shall not be included on a preferred lender list

7 4 unless such agreement is disclosed therein in the same font
7 5 size and same manner as the predominant text on the document
7 6 in which the preferred lender list appears.

7 7 7. A lending institution shall not be placed on a covered
7 8 institution's preferred lender lists or in favored placement
7 9 on a covered institution's preferred lender lists for a
7 10 particular type of loan, in exchange for benefits provided to
7 11 the covered institution or to the covered institution's
7 12 students in connection with a different type of loan.

7 13 Sec. 9. NEW SECTION. 261E.9 PROPER EXECUTION OF MASTER
7 14 PROMISSORY NOTES.

7 15 A covered institution shall not direct potential borrowers
7 16 to any electronic master promissory notes or other loan
7 17 agreements that do not allow the borrower to enter the lender
7 18 code or name for any lending institution offering the relevant
7 19 loan.

7 20 Sec. 10. NEW SECTION. 261E.10 DISCLOSURES AT REQUEST OF
7 21 COVERED INSTITUTIONS.

7 22 Except for educational loans made, insured, or guaranteed
7 23 by the federal government, upon the request of any covered
7 24 institution, a lending institution shall disclose to such
7 25 covered institution, in reasonable detail and form, the
7 26 historic default rates of the borrowers from such covered
7 27 institution, and the rates of interest charged to borrowers
7 28 from such covered institution in the year preceding the
7 29 disclosures and the number of borrowers obtaining each rate of
7 30 interest.

7 31 Sec. 11. NEW SECTION. 261E.11 PENALTIES.

7 32 1. If after providing notice and an opportunity for a
7 33 hearing the administrator determines that a covered
7 34 institution or lending institution has violated a provision of
7 35 this chapter, the covered institution or lending institution
8 1 may be liable for a civil penalty of up to fifty thousand
8 2 dollars. In taking action against a covered institution or
8 3 lending institution, consideration shall be given to the
8 4 nature and severity of a violation of this chapter.

8 5 2. If after providing notice and an opportunity for a
8 6 hearing the administrator determines that a covered
8 7 institution employee has violated a provision of this chapter,
8 8 the covered institution employee may be liable for a civil
8 9 penalty of up to seven thousand five hundred dollars. In
8 10 taking action against a covered institution employee,
8 11 consideration shall be given to the nature and severity of a
8 12 violation of this chapter.

8 13 3. If after providing notice and an opportunity for a
8 14 hearing the administrator determines that a lending
8 15 institution has violated a provision of this chapter, such
8 16 lending institution shall not be placed or remain on any
8 17 covered institution's preferred lender list unless notice of
8 18 such violation is provided to all potential borrowers of the
8 19 covered institution.

8 20 4. Nothing in this section shall prohibit the
8 21 administrator from reaching a settlement agreement with a
8 22 covered institution, covered institution employee, or lending
8 23 institution in order to effectuate the purposes of this
8 24 section. Provided, however, if such settlement agreement is
8 25 reached with a covered institution or lending institution, the
8 26 administrator shall provide notice of such action to the
8 27 borrowers in a form and manner prescribed by the
8 28 administrator.

8 29 5. The administrator shall deposit the funds generated
8 30 pursuant to this section into the student lending education
8 31 fund, created in section 261E.13. Such funds shall be given
8 32 to covered institutions upon application to the attorney
8 33 general for the purposes provided pursuant to section 261E.13.

8 34 Sec. 12. NEW SECTION. 261E.12 RULES AND REGULATIONS.

8 35 The attorney general and any official or agency charged by
9 1 the attorney general with enforcing this chapter against a
9 2 person under investigation shall promulgate rules and
9 3 regulations necessary for the implementation of this chapter.

9 4 Sec. 13. NEW SECTION. 261E.13 STUDENT LENDING EDUCATION
9 5 FUND.

9 6 1. There is established in the state treasury a student
9 7 lending education fund.

9 8 2. The fund shall consist of all revenues generated
9 9 pursuant to section 261E.11 and all other moneys credited or
9 10 transferred to the fund from any other fund or source pursuant
9 11 to law.

9 12 3. Moneys in the fund shall be made available to the
9 13 attorney general for the purposes of:

9 14 a. Supporting programs that educate students, prospective

9 15 students, and parents of such students on the loan process
9 16 including but not limited to available loan options and
9 17 understanding rates and terms of student loans.
9 18 b. Reimbursing students from inflated loan prices caused
9 19 by revenue sharing agreements between such covered institution
9 20 and a lending institution.

9 21 EXPLANATION

9 22 This bill relates to protection of students and parents
9 23 from certain lenders and institutions of higher education with
9 24 conflicts of interest, and establishes penalties and a student
9 25 lending education fund under the control of the attorney
9 26 general.

9 27 DEFINITIONS. The bill defines "covered institution" as any
9 28 educational institution that offers a postsecondary
9 29 educational degree, certificate, or program of study and
9 30 receives state funding or assistance. The term includes an
9 31 agent of the educational institution, including an alumni
9 32 association, booster club, or other organization directly or
9 33 indirectly associated with the institution. "Gift" means
9 34 anything having a monetary value of more than \$10 except a
9 35 lending institution's own brochure or promotional literature
10 1 and food, refreshments, training, or informational material
10 2 furnished to a covered institution employee as an integral
10 3 part of a training session, if such training contributes to
10 4 the professional development of the covered institution
10 5 employee.

10 6 GIFTS AND REMUNERATION PROHIBITED. The bill prohibits a
10 7 lending institution from providing a covered institution with
10 8 a gift in exchange for any advantage or consideration relating
10 9 to the lending institution's educational loan activities.
10 10 Likewise, the bill prohibits a covered institution and its
10 11 employees from accepting or soliciting a gift from a lending
10 12 institution for any advantage or consideration relating to the
10 13 lending institution's educational loan activities and from
10 14 revenue sharing with the lending institution. However,
10 15 nothing in the bill prohibits a covered institution employee
10 16 from conducting business with a lending institution unrelated
10 17 to a covered institution.

10 18 GIFT REPORTING. Covered institution employees are required
10 19 to report to the administrator any instance of a lending
10 20 institution attempting to give a gift to such covered
10 21 institution employees.

10 22 ADMINISTRATOR. The administrator of the chapter is the
10 23 attorney general or the attorney general's designee. However,
10 24 the bill authorizes the attorney general to charge the college
10 25 student aid commission or the superintendent of banking,
10 26 credit unions, or savings and loans with enforcing the
10 27 chapter, and those entities are permitted to adopt rules to
10 28 implement the chapter.

10 29 REMUNERATION PROHIBITED. An employee of a covered
10 30 institution is prohibited from receiving remuneration or
10 31 expense reimbursement for serving as a member or participant
10 32 of an advisory board of a lending institution. Lending
10 33 institutions are prohibited from providing remuneration or
10 34 expense reimbursement to a covered institution employee for
10 35 serving as a member or participant of an advisory board of a
11 1 lending institution.

11 2 EMPLOYEE DISCLOSURE OF BENEFIT. Covered institution
11 3 employees who are directly involved with or benefit from the
11 4 functions of the covered institution's financial aid office
11 5 are required to report to the administrator all participation
11 6 or financial interests related to any lending institution.

11 7 EMPLOYEE AND AGENT MISREPRESENTATION PROHIBITED. A lending
11 8 institution is prohibited from representing its employees or
11 9 agents to borrowers or prospective borrowers of a covered
11 10 institution as employees, representatives, or agents of a
11 11 covered institution. Employees or agents of a covered
11 12 institution are also prohibited from identifying themselves as
11 13 employees or agents of a lending institution to borrowers or
11 14 prospective borrowers of the covered institution.

11 15 FINANCIAL AID STAFFING PROHIBITION. An employee,
11 16 representative, or agent of a lending institution is
11 17 prohibited from staffing a covered institution's financial aid
11 18 offices.

11 19 DISCLOSURE OF FAVORABLE LOAN OPTIONS. A covered
11 20 institution must inform the borrower or prospective borrower
11 21 of all available federal financing options that are more
11 22 favorable to the borrower before a lending institution may
11 23 provide a private educational loan to a borrower attending a
11 24 covered institution with which a lending institution has an
11 25 educational loan arrangement.

11 26 HIGH RISK LOAN PROHIBITION. Lending institutions and
11 27 covered institutions are prohibited from entering into an
11 28 agreement, or otherwise providing any high risk loans, in
11 29 exchange for the covered institution providing concessions or
11 30 promises to the lending institution that may prejudice other
11 31 borrowers or prospective borrowers.
11 32 PREFERRED LENDER LIST STANDARDS. The bill establishes a
11 33 number of standards with which a covered institution that
11 34 provides or makes available a preferred lender list must
11 35 comply. A lending institution that violates a provision of
12 1 the bill shall not be placed or remain on any covered
12 2 institution's preferred lender list unless notice of the
12 3 violation is provided to all potential borrowers.
12 4 ELECTRONIC MASTER PROMISSORY NOTE PROHIBITION. A covered
12 5 institution is prohibited from directing potential borrowers
12 6 to any electronic master promissory notes or other loan
12 7 agreements that do not allow the borrower to enter the lender
12 8 code or name for any lending institution offering the relevant
12 9 loan.
12 10 DEFAULT RATE DISCLOSURE. Lending institutions must
12 11 disclose to covered institutions the historic default rates of
12 12 the borrowers and the rates of interest charged to borrowers
12 13 from such covered institution in the year preceding the
12 14 disclosures and the number of borrowers obtaining each rate of
12 15 interest.
12 16 CIVIL PENALTY. An institution that violates a provision of
12 17 the bill may be liable for a civil penalty of up to \$50,000.
12 18 A covered institution employee who violates a provision of the
12 19 bill may be liable for a civil penalty of up to \$7,500.
12 20 FUND USE. Funds collected which result from the imposition
12 21 of penalties are to be deposited in the student lending
12 22 education account, which is established in the state treasury
12 23 and is available to the attorney general. Moneys in the fund
12 24 may be given to covered institutions to educate borrowers and
12 25 prospective borrowers on the loan process and to reimburse
12 26 borrowers from inflated loan prices caused by revenue sharing
12 27 agreements between covered institutions and lending
12 28 institutions.
12 29 LSB 2939SC 82
12 30 kh:nh/gg/14