SENATE, No. 804



STATE OF NEW JERSEY

219th LEGISLATURE



PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator SANDRA B. CUNNINGHAM

District 31 (Hudson)

SYNOPSIS

Prohibits academic degree-granting institutions from entering into revenue sharing arrangements with financial institutions for consumer financial products or services and regulates consumer financial products or services marketed to students.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



An Act concerning certain contractual agreements between academic degree-granting institutions and financial institutions and supplementing chapter 3C of Title 18A of the New Jersey Statutes.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. As used in this act:

“Academic degree-granting institution” means an institution of higher education or a proprietary school which has been authorized to offer licensed degree programs.

“Affiliated” means an association between an academic degree-granting institution and a consumer financial product or service resulting from:

(1) the use of the name, emblem, mascot, or logo of the institution in respect to a consumer financial product or service;

(2) the use of some other word, picture, or symbol, which is readily identifiable with the academic degree-granting institution, in the marketing of the consumer financial product or service in any way that implies that the academic degree-granting institution endorses the consumer financial product or service; or

(3) the academic degree-granting institution communicating information directly to its students regarding a consumer financial product or service and how students may access the consumer financial product or service.

“Financial institution” means a bank, savings association, credit union, or any other entity that directly or indirectly holds, provides, or issues a financial account or any other consumer financial product or service to a student of an academic degree-granting institution.

“Revenue sharing arrangement” means an arrangement between an academic degree-granting institution and a financial institution under which:

(1) the financial institution provides or issues a consumer financial product or service to students attending the academic degree-granting institution;

(2) the academic degree-granting institution recommends, promotes, sponsors, or otherwise endorses the financial institution or a consumer financial product or service offered by the financial institution; and

(3) the financial institution pays a fee or provides other material benefits, including revenue or profit sharing, to the academic degree-granting institution in connection with a consumer financial product or service provided to students of the academic institution.

2. a. An academic degree-granting institution shall not enter into any revenue sharing arrangement with a financial institution to offer an affiliated consumer financial product or service.

b. Nothing in this act shall be construed to deem an association between an academic degree-granting institution and a consumer financial product or service to be affiliated if such association is solely based on an advertisement by a financial institution that is delivered to a wide and general audience consisting of more than enrolled students at the academic degree-granting institution.

c. Nothing in this act shall be construed to deem an arrangement between an academic degree-granting institution and a financial institution to be a revenue sharing arrangement if the arrangement is based solely on a financial institution paying a fair market price to an academic degree-granting institution for the academic institution to advertise or market the financial institution to the general public.

3. The terms and conditions of a consumer financial product or service offered, provided, issued, recommended, promoted, sponsored, or otherwise endorsed by an academic degree-granting institution pursuant to a contractual agreement between the institution and a financial institution shall not be inconsistent with the best financial interests of the students accessing or using the consumer financial product or service. An academic degree-granting institution shall ensure that the terms and conditions of the consumer financial product or service are not inconsistent with the best financial interests of students by:

a. documenting that it conducts reasonable due diligence reviews at least every two years to ascertain whether the fees assessed by the consumer financial product or service under the contractual agreement are, considered as a whole, at or below prevailing market rates;

b. making provision in the contractual agreement for termination of the agreement based on complaints received from students or a determination by the academic degree-granting institution that the fees assessed by the consumer financial product or service under the agreement are not at or below prevailing market rates;

c. ensuring that the consumer financial product or service does not charge overdraft fees or other nonsufficient funds fees; and

d. ensuring that a student’s consent to access and use a consumer financial product or service has been obtained before providing, or permitting a financial institution to provide, any personally identifiable information about the student, other than directory information, to the financial institution or its agents.

4. a. An academic degree-granting institution that enters into a contractual agreement with a financial institution to offer, provide, issue, recommend, promote, sponsor, or otherwise endorse a consumer financial product or service to students shall post conspicuously on its Internet website the contractual agreement in its entirety, except any portions that, if disclosed, would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities.

The academic degree-granting institution shall submit the contractual agreement and an accompanying summary of the contract provisions to the Office of the Secretary of Higher Education to be posted on the office’s Internet website. The accompanying summary shall describe the terms and conditions of the contractual agreement and include information on the number of students who accessed and used the consumer financial product or service pursuant to the contractual agreement at any time during the year and the mean and median costs incurred by those students.

b. The Office of the Secretary of Higher Education shall annually submit to the Governor, and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), a report describing the terms and conditions of the contractual agreements submitted pursuant to subsection a. of this section, the number of students who accessed and used the consumer financial product or service pursuant to the contractual agreement at any time during the year, and the mean and median costs incurred by those students.

5. The Secretary of Higher Education, in consultation with the Commissioner of Banking and Insurance, shall adopt rules and regulations pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to implement the provisions of this act.

6. This act shall take effect on the 30th day following the date of enactment.

STATEMENT

This bill would prohibit institutions of higher education and proprietary institutions authorized to offer licensed degree programs from entering into revenue sharing arrangements with financial institutions for consumer financial products or services, which are affiliated with the academic institution.

Under the bill, an academic institution is prohibited from entering into revenue sharing arrangements under which: the financial institution provides or issues a consumer financial product or service to students; the academic institution recommends, promotes, sponsors, or otherwise endorses the financial institution or its products or services; and the financial institution pays a fee or provides other material benefits to the academic institution in connection with the consumer financial products or services provided to students. The bill does not consider consumer financial products or services to be affiliated if the association with an academic institution is based solely on a financial institution advertising its products to a wide and general audience. It also does not prohibit arrangements based solely on the financial institution paying a fair market price to an academic degree-granting institution for the academic institution to advertise or market the financial institution to the general public.

The bill also requires an academic degree-granting institution to ensure that the terms and conditions of a consumer financial product or service offered, provided, issued, recommended, promoted, sponsored, or otherwise endorsed pursuant to a contractual agreement between the institution and a financial institution are not inconsistent with the best financial interests of the students using the consumer financial products or services. Under the bill, an academic degree-granting institution is required to take certain steps to ensure that the consumer financial products or services are not inconsistent with the best financial interests of students. These provisions of the bill are modeled on similar language contained in the 2015 federal Department of Education regulations, often referred to as “cash management regulations.”

The bill requires an academic institution to post on its Internet website the contracts it enters into with financial institutions and to submit the contracts to the Office of the Secretary of Higher Education (OSHE) to be posted on OSHE’s Internet website.

This bill is in response to national reports, which found that certain agreements between colleges and banks can expose students to aggressive marketing tactics, high or unusual fees, and restricted choices for managing their money. A 2018 U.S. Consumer Financial Protection Bureau review of such agreements found that, under contracts in which banks pay colleges to promote the banks’ financial products and accounts, students typically pay more in fees. It is the view of the sponsor that these arrangements lead to increased debt burdens for many students. In prohibiting revenue sharing arrangements and requiring the contracts to be publicly posted, this bill is intended to increase transparency and promote college affordability.