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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. **1636**

02/25/2021 Authored by Bernardy

The bill was read for the first time and referred to the Committee on Judiciary Finance and Civil Law

03/09/2021 Adoption of Report: Amended and re-referred to the Committee on Higher Education Finance and Policy

1.1 A bill for an act  
1.2 relating to data practices; modifying certain provisions of the Minnesota college  
1.3 savings plan; amending Minnesota Statutes 2020, sections 136A.675; 136G.05,  
1.4 subdivision 10.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2020, section 136A.675, is amended to read:

1.7 **136A.675 RISK ANALYSIS.**

1.8 Subdivision 1. Standard development and usage. (a) To screen and detect whether an  
1.9 institution may not be financially or administratively responsible, the office shall develop  
1.10 a set of financial and programmatic evaluation metrics to aid in the detection of the failure  
1.11 or potential failure of a school to meet the standards established under sections 136A.61 to  
1.12 136A.71 nonfinancial indicators. These metrics shall include indicators of financial stability,  
1.13 changes in the senior management or the financial aid and senior administrative staff of an  
1.14 institution, changes in enrollment, changes in program offerings, and changes in faculty  
1.15 staffing patterns. The development of financial standards and nonfinancial indicators shall  
1.16 use industry standards as benchmarks guidance. The development of the nonfinancial  
1.17 standards shall include a measure of trends and dramatic changes in trends or practice.

1.18 (b) Annually, the agency office must specify the metrics and standards for each area and  
1.19 provide a copy of the financial and nonfinancial indicators to each registered institution and  
1.20 post them a list of reviewed indicators on the agency office website.

1.21 (c) The agency office shall use regularly reported data submitted to the federal  
1.22 government or other regulatory or accreditation agencies wherever possible. The agency

2.1 ~~may require more frequent data reporting by an institution to ascertain whether the standards~~  
2.2 ~~are being met.~~

2.3 (d) The office must use the indicators in this subdivision to screen for whether the  
2.4 institution is at risk of being unable to meet the standards established under sections  
2.5 136A.646; 136A.64, subdivision 3; 136A.65, subdivisions 1a and 4, paragraph (a), clauses  
2.6 (1), (2), (3), and (7); and 136A.685 and those violations may prevent the institution from  
2.7 meeting its financial obligations or completing its academic terms for the next 18 months.

2.8 Subd. 2. **Additional reporting.** (a) In addition to the information required for the  
2.9 indicators in subdivision 1, an institution must notify the office within ten business days if  
2.10 any of the events in paragraphs (b) to (e) occur.

2.11 (b) Notice is required for the following events related to revenue, debt, and cash flow:

2.12 (1) the institution has defaulted on a debt payment or covenant and has not received a  
2.13 waiver of the violation from the financial institution within 60 days;

2.14 (2) for institutions with a federal composite score of less than 1.5, the institution's owner  
2.15 withdraws equity that directly results in a composite score of less than 1.0, unless the  
2.16 withdrawal is a transfer between affiliated entities included in a common composite score;

2.17 (3) the United States Department of Education requires a 25 percent or greater Letter of  
2.18 Credit, except when the letter of credit is imposed due to a change of ownership;

2.19 (4) the United States Department of Education requires Heightened Cash Monitoring 2;

2.20 (5) the institution receives written notification that it violated the United States  
2.21 Department of Education's revenue requirement under United States Code, title 20, section  
2.22 1094(a)(24), as amended; or

2.23 (6) the institution receives written notification by the United States Department of  
2.24 Education that it has fallen below minimum financial standards and that its continued  
2.25 participation in Title IV is conditioned upon satisfying either the Zone Alternative, Code  
2.26 of Federal Regulations, title 34, section 668.175, paragraph (f), or a Letter of Credit  
2.27 Alternative, Code of Federal Regulations, title 34, section 668.175, paragraph (c).

2.28 (c) Notice is required for the following events related to accreditation and licensing:

2.29 (1) the institution receives written notification of probation, warning, show-cause, or  
2.30 loss of institutional accreditation;

2.31 (2) the institution receives written notification that its institutional accreditor loses federal  
2.32 recognition; or

3.1 (3) the institution receives written notification that it has materially violated state  
3.2 authorization or institution licensing requirements in a different state that may lead to or  
3.3 has led to the termination of the institution's ability to continue to provide educational  
3.4 programs or otherwise continue to operate in that state.

3.5 (d) Notice is required for the following events related to securities:

3.6 (1) the Securities and Exchange Commission: (i) issues an order suspending or revoking  
3.7 the registration of the institution's securities or (ii) suspends trading of the institution's  
3.8 securities on any national securities exchange;

3.9 (2) the national securities exchange on which the institution's securities are traded notifies  
3.10 the institution that it is not in compliance with the exchange's listing requirements and the  
3.11 institution's securities are delisted; or

3.12 (3) the Securities and Exchange Commission is not in timely receipt of a required report  
3.13 and did not issue an extension to file the report.

3.14 (e) Notice is required for the following events related to criminal and civil investigations:

3.15 (1) the institution receives written notification of a felony criminal indictment or charges  
3.16 of the institution's owner;

3.17 (2) the institution receives written notification of criminal indictment or charges of the  
3.18 institution's officers related to operations of the institution; or

3.19 (3) there has been a criminal, civil, or administrative adjudication of fraud or  
3.20 misrepresentation in Minnesota or in another state or jurisdiction against the institution or  
3.21 its owner, officers, agents, or sponsoring organization.

3.22 Subd. 3. **Determination procedures.** (a) If the office: (1) identifies a potential risk under  
3.23 subdivision 1, paragraph (d); (2) receives notification from an institution under subdivision  
3.24 2; or (3) identifies other exigent circumstances impacting or at the institution that may deny  
3.25 students a reasonable opportunity to complete their education program at the institution or  
3.26 through an alternate institution with minimal disruption, the office shall conduct a systematic  
3.27 evaluation under this paragraph to make a preliminary determination of whether action  
3.28 under paragraph (e) is necessary. The systematic evaluation must, to the extent practicable,  
3.29 be a collaboration between the office and the institution. The office must request additional  
3.30 context and information from the institution that demonstrates the administrative and financial  
3.31 responsibility of the institution. If the institution may not be financially or administratively  
3.32 responsible, a contingency plan must be implemented either collaboratively or as part of a  
3.33 final determination under paragraph (e), clause (4).

4.1 (b) The office shall provide notice in writing to the institution of the preliminary  
4.2 determination. The notice shall provide the analysis used by the office to make the  
4.3 determination, a request for the institution to provide additional context and information  
4.4 that demonstrates the administrative and financial responsibility of the institution not provided  
4.5 under paragraph (a), any potential action the office may take under paragraph (e), and a  
4.6 deadline for responding to the notice. The institution shall have not less than ten business  
4.7 days to respond to the preliminary determination.

4.8 (c) The response from the institution to provide additional context and information must  
4.9 be written and may include a collaborative consultation with the office. In its response, the  
4.10 institution shall provide additional context, financial data, and other information, including  
4.11 but not limited to evidence of sound business practices, institutional financial health,  
4.12 compliance with the requirements of sections 136A.61 to 136A.71, or sufficient and timely  
4.13 plans to cure any noncompliance or to manage financial health and risk.

4.14 (d) If the institution does not respond to the office's notice and request for additional  
4.15 context and information within the time required, the office's preliminary determination  
4.16 shall become final and the office may take any of the actions specified in the notice required  
4.17 by paragraph (e). If the institution responds to the office's notice, the office must reevaluate  
4.18 the preliminary determination. The office shall use the additional context and information  
4.19 provided by the institution to make a final determination and determine which actions under  
4.20 paragraph (e), if any, are necessary to mitigate risk to students and state financial aid under  
4.21 this chapter. The office shall provide the institution notice of the final determination and  
4.22 the actions required under paragraph (e).

4.23 (e) The office may use a final determination to:

4.24 (1) revoke, suspend, or refuse to renew registration, approval of an institution's degree,  
4.25 or use of a regulated term in its name under section 136A.65, subdivision 8;

4.26 (2) require periodic monitoring and submission of reports on the institution's  
4.27 administrative and financial responsibility to ascertain whether compliance and financial  
4.28 risk improves;

4.29 (3) require periodic collaborative consultations with the institution on noncompliance  
4.30 of sections 136A.61 to 136A.71, or how the institution is managing financial health and  
4.31 risk;

4.32 (4) require the institution to submit contingency plans such as teach-out plans or transfer  
4.33 pathways for students;

5.1 (5) prohibit the institution from accepting tuition and fee payments made through cash,  
5.2 alternative loans, or the equivalent, prior to the add/drop period of the current period of  
5.3 instruction;

5.4 (6) prohibit the institution from enrolling new students;

5.5 (7) initiate alternative processes and communications with students enrolled at the  
5.6 institution;

5.7 (8) require a surety bond under section 136A.646; or

5.8 (9) submit institution closure information under section 136A.645.

5.9 Subd. 4. **Data classification.** Data under this section shall be classified as financial  
5.10 records under section 136A.64, subdivision 2.

5.11 Sec. 2. Minnesota Statutes 2020, section 136G.05, subdivision 10, is amended to read:

5.12 Subd. 10. **Data.** (a) Account owner data, account data, and data on beneficiaries of  
5.13 accounts are private data on individuals or nonpublic data as defined in section 13.02, ~~except~~  
5.14 ~~that the names and addresses of the beneficiaries of accounts that receive matching grants~~  
5.15 ~~are public~~ unless the data qualifies for the exception in paragraph (b).

5.16 (b) Account owner data may be used by the office in cooperation with the Department  
5.17 of Revenue for the purposes of research and analysis to evaluate the plan in order to make  
5.18 ongoing informed decisions regarding the administration of the plan.