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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



# ENROLLED

SENATE BILL NO. 442

(By Senators Lucht & Burdette, Mr. President)



PASSED March 12, 1994

In Effect 90 days from Passage

**E N R O L L E D**

**Senate Bill No. 442**

(BY SENATORS LUCHT AND BURDETTE, MR. PRESIDENT)

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[Passed March 12, 1994; in effect ninety days from passage.]

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AN ACT to amend and reenact section five, article three, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to regulation of certain schools; requiring a permit from the board of directors of the state college system; establishing a permit fee and a permit renewal fee; requiring certain bonds; providing for fines for certain solicitations and advertisements; providing a method for resolving disputes; and declaring certain due process rights.

*Be it enacted by the Legislature of West Virginia:*

That section five, article three, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. BOARD OF DIRECTORS OF THE STATE COLLEGE SYSTEM.**

**§18B-3-5. Permits required for correspondence, business, occupational and trade schools; surety bonds and fees; issuance, renewal and revocation of permit; reports; rules; penalty and enforcement.**

1 (a) It shall be unlawful for any person representing  
2 a correspondence, business, occupational or trade

3 school inside or outside this state, as such shall be  
4 defined by the board of directors by rule promulgated  
5 in accordance with article three-a, chapter twenty-  
6 nine-a of this code, to solicit, sell or offer to sell  
7 courses of instruction to any resident of this state for  
8 consideration or remuneration unless the school first  
9 applies for a permit or obtains a permit from the West  
10 Virginia board of directors in the manner and on the  
11 terms herein prescribed.

12 All private training or educational institution, school  
13 or academy or other organization shall apply for a  
14 permit from the board of directors of the state college  
15 system on forms provided by the board. This section  
16 does not apply to private organizations that offer only  
17 tax return preparation courses. Each initial application  
18 shall be accompanied by a nonrefundable fee of two  
19 thousand dollars. The board may also assess an addi-  
20 tional fee based on any additional expense required to  
21 evaluate the application. The board shall make a  
22 determination on the initial permit application within  
23 ninety days after receipt of the application and fee. An  
24 applicant for an initial permit shall show proof at the  
25 time of filing an application that adequate facilities are  
26 available and ready for occupancy and that all instruc-  
27 tional equipment, books and supplies and personnel  
28 are in place and ready for operation. A representative  
29 of the board shall make an on-site visit to all new  
30 applicants' facilities to confirm its readiness for  
31 operation prior to issuance of the initial permit if the  
32 facilities are located in West Virginia.

33 A school is considered to be established under the  
34 provisions of this article on the date it first begins to  
35 lawfully operate. An established school is not required  
36 to reapply for a permit as a result of changes in  
37 governance; administration; ownership; or form of  
38 operation. After the first permit year an annual fee of  
39 five hundred dollars is imposed on each school for  
40 each campus it operates in this state.

41 (b) Each application shall be accompanied by a  
42 surety bond in the penal sum of thirty-five thousand  
43 dollars for any school which has its physical facilities

44 located in this state and which has operated in this  
45 state for at least ten years: *Provided*, That if the school  
46 has changed ownership within the last ten years by  
47 transfer of ownership control to a person who is a  
48 spouse, parent, sibling, child or grandchild of the  
49 previous owner, the surety bond shall continue in the  
50 penal sum of thirty five thousand dollars: *Provided*,  
51 *however*, That any school which has operated in West  
52 Virginia for less than ten years, including those  
53 schools which have changed ownership within the last  
54 ten years except those schools noted above who have  
55 transferred ownership control to a spouse, parent,  
56 sibling, child or grandchild of the previous owner  
57 within the last ten years and any school located in  
58 another state which applies for a permit hereunder,  
59 shall provide a surety bond of fifty thousand dollars:  
60 *Provided, further*, That any school may be required to  
61 increase its bond to one hundred fifty thousand dollars  
62 if its accreditation is terminated for cause or if the  
63 school's institutional eligibility under the Higher  
64 Education Act of 1965, as amended, has been terminat-  
65 ed for cause: *And provided further*, That expiration,  
66 nonrenewal or voluntary relinquishment of accredita-  
67 tion or institutional eligibility under said act, or failure  
68 to meet the requirements of one or more programs  
69 under said act, shall not be deemed a termination for  
70 cause.

71 In addition, any school may be required to increase  
72 its bond to an amount not to exceed four hundred  
73 thousand dollars if, in accordance with the standards  
74 of the American institute of certified public accoun-  
75 tants, the school's audited financial statements are  
76 qualified because the school's continued financial  
77 viability as an ongoing concern is in doubt, and the  
78 board of directors determines an increased bond is  
79 reasonably necessary to protect the financial obliga-  
80 tions legally due the students then enrolled at the  
81 institution. A school may be required to maintain the  
82 increased bonding requirements described above until  
83 all students attending classes at the date of termina-  
84 tion either graduate or withdraw. The bond may be  
85 continuous and shall be conditioned to provide indem-

86 nification to any student suffering loss as a result of  
87 any fraud or misrepresentation used in procuring the  
88 student's enrollment; failure of the school to meet  
89 contractual obligations; or failure of the school to meet  
90 the requirements of this section. The bond shall be  
91 given by the school itself as a blanket bond covering  
92 all of its representatives. The surety on any such bond  
93 may cancel the same upon giving thirty days' notice in  
94 writing to the principal on said bond and to the state  
95 board of directors and thereafter shall be relieved of  
96 liability for any breach of condition occurring after the  
97 effective date of said cancellation.

98 (c) A permit shall be valid for one year correspond-  
99 ing to the effective date of the bond and, upon  
100 application, accompanied by the required fee and the  
101 surety bond as herein required, may be renewed. All  
102 fees collected for the issuance or renewal of such  
103 permit shall be deposited in the state treasury to the  
104 credit of the board of directors.

105 The board may refuse a permit to any school if the  
106 board finds that the school engages in practices which  
107 are inconsistent with this section or with rules and  
108 regulations issued pursuant thereto. A permit issued  
109 hereunder, upon fifteen days' notice and after a  
110 hearing, if a hearing is requested by the school, may  
111 be suspended or revoked by the board of directors for  
112 fraud or misrepresentation in soliciting or enrolling  
113 students, for failure of the school to fulfill its contract  
114 with one or more students who are residents of West  
115 Virginia, or for violation of or failure to comply with  
116 any provision of this section or with any regulation of  
117 the state board of directors pertinent thereto. Prior to  
118 the board taking any adverse action, including refusal,  
119 suspension or revocation of a permit, the school shall  
120 be given reasonable opportunity to take corrective  
121 measures. Any refusal, suspension or revocation of a  
122 permit, or any other adverse action against a school,  
123 shall comply with all constitutional provisions, includ-  
124 ing due process, relating to the protection of property  
125 rights.

126 (d) All correspondence, business, occupational or

127 trade schools which have been issued a permit shall  
128 make annual reports to the board of directors on forms  
129 furnished by the board and shall provide such appro-  
130 priate information as the board reasonably may  
131 require. All correspondence, business, occupational or  
132 trade schools which have been issued a permit shall  
133 furnish to the board of directors a list of its official  
134 representatives. Each school shall be issued a certifi-  
135 cate of identification by the board of directors for each  
136 of its official representatives.

137 (e) The issuance of a permit pursuant to this section  
138 does not constitute approval or accreditation of any  
139 course or school. No school nor any representative of  
140 a school shall make any representation stating, assert-  
141 ing or implying that a permit issued pursuant to this  
142 section constitutes approval or accreditation by the  
143 state of West Virginia, state board of directors or any  
144 other department or agency of the state.

145 The board of directors is hereby authorized to adopt  
146 rules and conduct on-site reviews to evaluate academic  
147 standards maintained by schools for the awarding of  
148 certificates, diplomas and specialized associate degrees,  
149 which standards may include curriculum, personnel,  
150 facilities, materials and equipment: *Provided*, That in  
151 the case of accredited correspondence, business,  
152 occupational and trade schools under permit on the  
153 first day of July, one thousand nine hundred seventy-  
154 nine, having their physical facilities located in this  
155 state, and which are accredited by the appropriate  
156 nationally recognized accrediting agency or association  
157 approved by the United States department of educa-  
158 tion, the accrediting agency's standards, procedures  
159 and criteria shall be accepted as meeting applicable  
160 laws, standards and rules of the board of directors:  
161 *Provided, however*, That institutions, which are  
162 institutionally accredited by accrediting agencies that  
163 are recognized by the United States department of  
164 education to establish academic standards for postse-  
165 condary education, may offer postsecondary education-  
166 al programs leading to (and upon successful comple-  
167 tion of such programs award graduates) certificates,

168 diplomas and associate degrees in accordance with the  
169 academic standards required by such accrediting  
170 agency. If a review undertaken by the board indicates  
171 there may be deficiencies in the academic standards  
172 the institution maintains in its educational programs,  
173 that are of such a material nature as to jeopardize  
174 continued accreditation, the board shall notify the  
175 institution. If the board and the institution are unable  
176 to agree on the deficiencies or the steps necessary to  
177 correct the deficiencies, the board shall consult with  
178 the institution's accrediting agency regarding an  
179 academically appropriate resolution, which resolution  
180 may include a joint on-site review by the board and  
181 the accrediting agency. The board may also review the  
182 academic standards of unaccredited institutions and  
183 may require such institutions to maintain recognized  
184 academic standards that are reasonably appropriate to  
185 the nature of the institution and the training offered.  
186 The board of directors may authorize an investigation  
187 of written student complaints alleging a violation of  
188 this section, board rules, or accreditation standards  
189 and may take appropriate action based on the findings  
190 of such an investigation. All evaluations or investiga-  
191 tions of correspondence, business, occupational and  
192 trade schools, and actions resulting from such evalua-  
193 tions or investigations, shall be made in accordance  
194 with rules promulgated by the board of directors  
195 pursuant to article three-a, chapter twenty-nine-a of  
196 this code.

197 For the purposes of this section, proprietary schools  
198 that award specialized associate degrees shall be  
199 defined as institutions of higher education, and special-  
200 ized associate degrees shall mean degrees awarded by  
201 such institutions pursuant to a program of not less  
202 than two academic years: *Provided*, That nothing  
203 herein shall be construed to qualify the said propri-  
204 etary schools for additional state moneys not otherwise  
205 qualified for under other provisions of the code.

206 (f) In regard to private, proprietary educational  
207 institutions operating under this section of the code,  
208 accredited by a national or regional accrediting agency

209 or association recognized by the United States depart-  
210 ment of education and which provide training at a  
211 campus located in this state:

212 (1) Any rule or standard which is authorized by this  
213 or any section of the code or other law and which is  
214 now in effect or promulgated hereafter by the board  
215 of directors (or other agency with jurisdiction) shall be  
216 clearly, specifically and expressly authorized by  
217 narrowly construed enabling law and shall be unen-  
218 forceable and without legal effect unless authorized by  
219 an act of the Legislature under the provisions of  
220 article three-a, chapter twenty-nine-a of the code.

221 (2) Notwithstanding any other provision of this  
222 section or other law to the contrary, the institution's  
223 accrediting agency standards, procedures and criteria  
224 shall be accepted as the standards and rules of the  
225 board of directors (or other agency with jurisdiction)  
226 and as meeting other law or legal requirements  
227 relating to the operation of proprietary institutions  
228 which such board or other agency has the legal  
229 authority to enforce under any section of the code or  
230 other law: *Provided*, That nothing in this section shall  
231 be construed to deny students the use of remedies that  
232 would otherwise be available under state or federal  
233 consumer laws or federal law relating to federal  
234 college financial assistance programs.

235 (3) Accredited institutions operating hereunder are  
236 hereby recognized as postsecondary. Academic pro-  
237 gress shall be measured and reported in credit hours  
238 and all reports/documents filed on a credit hour basis  
239 unless the institution notifies the board that it utilizes  
240 clock hours as its unit of measurement.

241 (g) A representative of any school who solicits, sells  
242 or offers to sell courses of instruction to any resident  
243 of this state for consideration or remuneration unless  
244 the school first applies for a permit, or obtains a  
245 permit, shall be guilty of a misdemeanor, and, upon  
246 conviction thereof, shall be fined not more than two  
247 hundred dollars per day per violation, or imprisoned  
248 in the county jail not more than sixty days, or both



249 fined and imprisoned. No correspondence, business,  
250 occupational or trade school shall maintain an action  
251 in any court of this state to recover for services  
252 rendered pursuant to a contract solicited by the school  
253 if the school did not hold a valid permit at the time the  
254 contract was signed by any of the parties thereto. The  
255 attorney general or any county prosecuting attorney,  
256 at the request of the board of directors or upon his or  
257 her own motion, may bring any appropriate action or  
258 proceeding in any court of competent jurisdiction for  
259 the enforcement of the provisions of this section  
260 relating to permits, bonds and sureties.

261 (h) In regard to institutions operating under this  
262 section, all substantive standards and procedural  
263 requirements established by the board of directors (or  
264 the West Virginia state program review entity or other  
265 agency with jurisdiction over institutions operating  
266 hereunder) shall meet all substantive and procedural  
267 standards of due process relating to the protection of  
268 an individual citizen's property rights as provided for  
269 under the United States Constitution, and shall follow  
270 the substantive standards and procedural require-  
271 ments established by or under authority of this  
272 section.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Handwritten Signature]*  
.....  
Chairman Senate Committee

*[Handwritten Signature]*  
.....  
Ernest C. Moore  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Handwritten Signature]*  
.....  
Clerk of the Senate

*[Handwritten Signature]*  
.....  
Clerk of the House of Delegates

*[Handwritten Signature]*  
.....  
President of the Senate

*[Handwritten Signature]*  
.....  
Speaker House of Delegates

The within is approved this the 30<sup>th</sup>.....  
day of March....., 1994.

*[Handwritten Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date

3/30/94

Time

1:09 pm