

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

House Bill 3555

BY DELEGATES STATLER, TONEY, FOGGIN, HORNBY,

LUCAS, MAZZOCCHI, E. PRITT AND WILLIS

[Passed March 11, 2023; in effect ninety days from passage.]

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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1 AN ACT to amend and reenact §18B-10-14 of the Code of West Virginia, 1931, as amended,
2 relating to allowing higher education institutions to offer a courseware and book fee at a
3 lump sum or per credit hour amount if an opt out option is offered for students in advance
4 of the start of each academic term; amending provisions pertaining to requirements
5 imposed on institutions when there are new or increased charges for course materials or
6 digital courseware for certain reasons; adding to exclusions from the requirement that the
7 agreement between an institution and an entity under which the institution assesses on
8 the entity's behalf or allows the entity to assess a charge to students enrolled at the
9 institution include a prohibition against the entity engaging in, or authorizing third parties
10 to engage in, the sale, disclosure, licensing, use, retention, or other exploitation of any
11 data collected under the agreement; and removing prohibition against denial of a student
12 access to educational materials for which the student has been, or would otherwise be,
13 automatically charged on the student's refusal or failure to agree to the sale, disclosure,
14 licensing, use, retention, or other exploitation of any data pertaining to the student that
15 would be obtained through the use of the student's educational materials.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF
HIGHER EDUCATION.**

§18B-10-14. Bookstores.

1 (a) Definitions: The following words when used in this section have the meanings ascribed
2 to them unless the context clearly indicates a different meaning:

3 (1) "Digital Courseware" means a system of educational content and software designed
4 to support the delivery of all or part of a particular course. The term does not include a learning
5 management platform or any other software system designed to provide support for courses
6 generally;

7 (2) "Course material" means a textbook, supplemental material, or open educational
8 resource; and

9 (3) "Open Education Resource Materials" has the meaning assigned in §10-1-14a of this
10 code.

11 (b) Each governing board may establish and operate a bookstore at the institutions under
12 its jurisdiction to sell course materials, educational materials, books, stationery, and other school
13 and office supplies generally carried in college bookstores. Institutions may work with booksellers,
14 publishers, or other third parties to offer a courseware and book fee at a lump sum or per credit
15 hour amount, provided that an opt out option is offered to students in advance of the start of each
16 academic term.

17 (c) The prices to be charged may not be less than the prices fixed by any fair trade
18 agreements and shall, in all cases, include in addition to the purchase price paid by the bookstore,
19 a sufficient handling charge to cover all expenses incurred for personal and other services,
20 supplies and equipment, storage, and other operating expenses.

21 (d) Each governing board shall establish, or if already established, continue, an
22 educational materials affordability committee consisting of faculty, students, administrators and
23 bookstore representatives and the committee shall make recommendations to the governing
24 board to:

25 (1) Encourage bookstores operated at institutions under its jurisdiction minimize the costs
26 to students of purchasing educational materials;

27 (2) Encourage course instructors to select appropriate, high quality course educational
28 materials;

29 (3) Encourage the use of previous or older versions of basic educational materials to the
30 extent those older versions are available and less costly to students and remain relevant, high
31 quality educational materials with up-to-date information and content;

32 (4) Require the repurchase and resale of educational materials on an institutional basis;

33 (5) Encourage the use of certain basic educational materials for a reasonable number of
34 years;

35 (6) Encourage the use of emerging technologies, such as electronic textbooks,
36 online textbooks, print-on-demand services, and other open resource materials; and

37 (7) Prohibit employees from profiteering by requiring the purchase of one-time use
38 materials (such as worksheets) or receiving payment or other consideration as an inducement to
39 require students to purchase course materials.

40 (e) An employee of a governing board:

41 (1) May not:

42 (A) Receive a payment, loan, subscription, advance, deposit of money, service, benefit or
43 thing of value, present or promised, as an inducement for requiring students to purchase a
44 specific course material for coursework or instruction; or

45 (B) Require for any course a course material that includes his or her own writing or work
46 if the course material incorporates either detachable worksheets or workbook-style pages
47 intended to be written on or removed from the course material. This provision does not prohibit
48 an employee from requiring as a supplement to course materials any workbook or similar material
49 which is published independently from the course material; and

50 (2) May receive:

51 (A) Sample copies, instructor's copies and instructional material which are not to be sold;
52 and

53 (B) Royalties or other compensation from sales of course materials that include the
54 employee's own writing or work.

55 (f) A governing board shall provide to students a listing of course materials required or
56 assigned for any course offered at the institution.

57 (1) The listing shall be prominently posted:

58 (A) In a central location at the institution;

59 (B) In any campus bookstore; and

60 (C) On the institution's website.

61 (2) The list shall include for each textbook the International Standard Book Number
62 (ISBN), the edition number and any other relevant information.

63 (3) The list shall include whether the course material is an open educational resource
64 material, and whether all educational materials required for the course or course section are
65 generally available at no cost and without limitation to all students enrolled in the course or course
66 section.

67 (4) The list shall include any associated fee or charge, such as a technology cost, library
68 use cost, or printing or publication fee.

69 (5) If the student will be charged for the course material or for access to digital courseware
70 for a course by the institution or another entity on the student's enrollment in a course, course
71 section, or program or in the institution for the applicable semester or term, the list shall include
72 the disclosures required under subsections (g)-(j) of this section.

73 (6) An institution shall post a course material to the listing when the adoption process is
74 complete and, for course materials that comes at a cost to the student, when the course
75 material is designated for order by the bookstore.

76 (g) An institution shall disclose to a student enrolled at the institution as provided by this
77 section any charges for course materials or access to digital courseware assessed by the
78 institution or another entity to the student on the student's enrollment in a course, course section,
79 or program or in the institution for the applicable semester or term, regardless of how the charge
80 is assessed on an opt-in, opt-out, or compulsory basis. This subsection does not apply to a charge
81 assessed for a purchase initiated by the student separately from the enrollment process at the
82 institution, such as the purchase of course materials at a bookstore that may be charged to the
83 student's account at the institution.

84 (h) If the required course materials or digital courseware have not been selected prior to
85 a student's enrollment in a course or course section such that the requirements of subsection (g)
86 are not met, and if that selection would cause an increased charge to the student, the institution
87 shall no later than 30 days prior to the start of the course or course section:

88 (1) Provide individual notice to each student affected of the new or increased charges,
89 including all of the information required under subsection (g);

90 (2) Provide each student affected with the opportunity to withdraw from the course or
91 course section, or change to a different course or course section, without penalty; and

92 (3) Only assess the new or increased charge to a student if the institution has a policy
93 under which the student may opt out of the way the institution provides for the student to obtain
94 or purchase the course materials and receive a full refund for any charges already incurred for
95 course materials for that specific course or course section.

96 (i) For a charge described by subsection (g) that is assessed based on the cost of required
97 or recommended course materials or access to digital courseware for a certain course or course
98 section in which the student is enrolled, the institution shall:

99 (1) In the listing required under subsection (f), state or provide an internet website link to:

100 (A) The full amount of the charge;

101 (B) If the charge is for a course material in a primarily electronic format or for access to
102 digital courseware, the terms under which the publisher of the course material or digital
103 courseware collects and uses student data obtained through a student's use of the course
104 material or digital courseware; and

105 (C) Any provision that allows the student to opt in or opt out of the charge or the collection
106 or use of the student's data; and

107 (2) Itemize the charge separately from any other charges assessed for the course or
108 course section in the institution's billing to the student.

109 (j) For a charge described by subsection (g) that is assessed on the basis of the number
110 of semester credit hours or the equivalent or the number of courses in which the student is
111 enrolled or on any other basis not described by subsection (i), the institution shall:

112 (1) Include the amount of the charge in the institution's tuition or fees under §18B-10-1 of
113 this code;

114 (2) In a prominent location in any written or electronic agreement authorizing the charge,
115 disclose:

116 (A) If the charge is for course materials in a primarily electronic format or for access to
117 digital courseware, the terms under which the publisher of the course material or digital
118 courseware collects and uses student data obtained through a student's use of the course
119 material or digital courseware; and

120 (B) Any provision that allows the student to opt in or opt out of the charge or the collection
121 or use of the student's data; and

122 (3) Not assess the charge to a student for a course or course section for which all required
123 educational materials are generally available at no cost in at least one form to the student, such
124 as:

125 (A) An open educational resource material;

126 (B) Digital materials available at no cost through a multi-user license held by the
127 institution's library; or

128 (C) Other lawfully made materials available to the public at no cost and without limitation
129 to all students enrolled in the course or course section.

130 (k) An institution may enter into an agreement between the institution and an entity under
131 which the institution assesses on the entity's behalf or allows the entity to assess a charge
132 described by subsection (g) to students enrolled at the institution only if:

133 (1) The institution's educational materials affordability committee established under
134 subsection (d) determines the agreement to be consistent with the goals enumerated in
135 subsection (d);

136 (2) The governing board of the institution adopts a policy that provides that:

137 (A) The institution's refund policy would apply with respect to the charges assessed to a
138 student if the student withdraws from the course or course section; and

139 (B) A student may opt out of the charge at any time during a period beginning no later than
140 when the student enrolls in the course or course section or takes any other action triggering the
141 assessment of the charge, and ending no earlier than the last day to withdraw from the course
142 without penalty;

143 (3) The agreement does not provide for a penalty or charge added to price of materials
144 provided under the agreement based on failing to meet a target or quota for a number or
145 percentage of:

146 (A) Students to whom the charge is assessed; or

147 (B) Courses or course sections for which the charge is assessed; and

148 (4) The agreement prohibits the entity from engaging in, or authorizing third parties to
149 engage in, the sale, disclosure, licensing, use, retention, or other exploitation of any data
150 collected under the agreement, including but not limited to personally identifiable information,
151 location data, anonymized data, and any materials derived therefrom, except as permitted by
152 the Family Education Rights and Privacy Act (20 U.S.C. § 1232g and 34 CFR Part 99) or other
153 applicable law. Provided, that this subsection shall not apply to:

154 (A) The disclosure of information to a government entity or scholarship entity in order to
155 be reimbursed for the distribution of course materials to a student using financial aid subsidies
156 for course materials;

157 (B) The use of student data for research and development of course materials or the
158 entity's educational sites, services, or applications, and to demonstrate the effectiveness of the
159 entity's services;

160 (C) The use of de-identified student data for adaptive learning purposes and customized
161 student learning;

162 (D) Disclosures made to a service provider, provided the entity:

163 (i) Prohibits the service provider from using any student data for any purpose other than
164 providing the contracted service to, or on behalf of, the entity,

165 (ii) Prohibits the service provider from disclosing any student data provided by the entity
166 with subsequent third parties without explicit permission from the entity, and

167 (iii) Requires the service provider to implement and maintain reasonable security
168 procedures and practices to protect the student data;

169 (E) Use, disclosure, or retention of student data to ensure legal and regulatory
170 compliance or to respond or to or participate in judicial process;

171 (F) Use, disclosure, or retention of student data to protect the safety of users or others or
172 security of entity's sites, services, or applications; and

173 (G) When the student or guardian, as applicable, has granted prior written consent for the
174 sale, disclosure, licensing, use, or retention of student data.

175 (I) An agreement authorized under subsection (k) is a public record under chapter 29B of
176 this code.

177 (m) All moneys derived from the operation of the bookstore shall be paid into a special
178 revenue fund as provided in §12-2-2 of this code. Subject to the approval of the Governor, each
179 governing board periodically shall change the amount of the revolving fund necessary for the
180 proper and efficient operation of each bookstore.

181 (n) Moneys derived from the operation of the bookstore shall be used first to replenish the
182 stock of goods and to pay the costs of operating and maintaining the bookstore. Notwithstanding

183 any other provision of this section, any institution that has contracted with a private entity for
184 bookstore operation shall deposit into an appropriate account all revenue generated by the
185 operation and enuring to the benefit of the institution. The institution shall use the funds for
186 nonathletic scholarships.

187 (o) Each governing board shall promulgate a rule in accordance with the provisions of
188 §18B-1-6 of this code to implement the provisions of this section.

189 (p) This section applies to course material sales and bookstores supported by an
190 institution's auxiliary services and those operated by a private contractor.

191 (q) This section may not be construed to affect any authority granted to a faculty member
192 by an institution to select course materials for courses taught by the faculty member.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

Steve Harris
.....
Clerk of the House of Delegates

Joe Linn
.....
Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

FILED
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Rep. Harlow
.....
Speaker of the House of Delegates

C. P. Bost
.....
President of the Senate

The within is *approved* this the *29th*
Day of *March* 2023.

James Justice
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 27 2023

Time _____

PRESENTED TO THE GOVERNOR

MAR 27 2023

Time 2:52pm