WEST VIRGINIA CODE: §18B-10-14

§18B-10-14. Bookstores.

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

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

(2) “Course material” means a textbook, supplemental material, or open educational resource; and

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

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

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

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

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

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

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

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

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

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

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

(e) An employee of a governing board:

(1) May not:

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

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

(2) May receive:

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

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

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

(1) The listing shall be prominently posted:

(A) In a central location at the institution;

(B) In any campus bookstore; and

(C) On the institution’s website.

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

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

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

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

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

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

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

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

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

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

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

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

(A) The full amount of the charge;

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

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

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

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

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

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

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

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

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

(A) An open educational resource material;

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

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

(k) An institution may enter into an agreement between the institution and an entity under

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which the institution assesses on the entity's behalf or allows the entity to assess a charge described by subsection (g) to students enrolled at the institution only if:

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

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

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

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

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

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

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

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

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

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

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

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

(i) Prohibits the service provider from using any student data for any purpose other than

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providing the contracted service to, or on behalf of, the entity,

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

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

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

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

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

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

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

(n) Moneys derived from the operation of the bookstore shall be used first to replenish the stock of goods and to pay the costs of operating and maintaining the bookstore. Notwithstanding any other provision of this section, any institution that has contracted with a private entity for bookstore operation shall deposit into an appropriate account all revenue generated by the operation and enuring to the benefit of the institution. The institution shall use the funds for nonathletic scholarships.

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

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

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

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