WEST VIRGINIA CODE: §18B-2B-9

§18B-2B-9. Permits required for correspondence, business, occupational and trade schools; surety bonds amount and method of bonding; fees; issuance, renewal and revocation of permit; reports; rules; penalty and enforcement.

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

(1) "Proprietary schools that award specialized associate degrees" means institutions of higher education; and

(2) "Specialized associate degrees" means degrees awarded by such institutions pursuant to a program of not fewer than two academic years.

(b) Nothing in this section qualifies proprietary schools for additional state moneys not otherwise qualified under other provisions of this code.

(c) It is unlawful for any person representing a correspondence, business, occupational or trade school inside or outside this state, as these are defined by the council by rule promulgated in accordance with §29A-3A-1 *et seq.* of this code, to solicit, sell or offer to sell courses of instruction to any resident of this state for consideration or remuneration unless the school first applies for a permit, or obtains a permit, from the council in the manner and on the terms herein prescribed, except this section does not apply to private organizations which offer only tax return preparation courses. The rule previously promulgated by the state College System Board of Directors and transferred to the council by §18B-2B-6 of this code remains in effect until rescinded or amended by the council.

(1) All private training or educational institutions, schools or academies or other organizations shall apply for a permit from the council on forms provided by the council.

(2) Each initial application shall be accompanied by a nonrefundable fee of $2,000. The council also may assess an additional fee based on any additional expense required to evaluate the application.

(3) The council shall make a determination on the initial permit application within 90 days after receipt of the application and fee.

(4) An applicant for an initial permit shall show proof at the time of filing an application that adequate facilities are available and ready for occupancy and that all instructional equipment, books and supplies and personnel are in place and ready for operation. A representative of the council shall make an on-site visit to the facilities of all new applicants to confirm their readiness for operation prior to issuance of the initial permit if the facilities are located in West Virginia.

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(5) A school is considered to be established under the provisions of this article on the date it first begins to operate lawfully. An established school is not required to reapply for a permit as a result of changes in governance; administration; ownership; or form of operation.

(6) After the first permit year, an annual fee of $500 is imposed on each school for each campus it operates in this state.

(d) Each application for a proprietary school that has its physical facilities in this state shall be accompanied by a penal bond, on a form to be prescribed and furnished by the council, payable to the State of West Virginia and conditioned upon the school faithfully performing all of the requirements of this section, the rules promulgated hereunder, and the permit. The penal amount of the bond, as determined by the council, may not be less than $50,000 nor more than $100,000.

(1) If the school has changed ownership within the last 10 years by transfer of ownership control to a person who is a spouse, parent, sibling, child or grandchild of the previous owner, the surety bond shall continue in the penal sum as determined by the council. The period of liability for bond coverage begins with the issuance of the permit and continues for the full term of the permit, plus any renewals thereof. The council shall release the bond upon satisfaction that the conditions thereof have been fully performed. Upon release of the bond, any cash or collateral securities deposited by the school shall be returned to the school that deposited the same.

(2) Any school which has operated in West Virginia for fewer than 10 years, excluding those schools which have changed ownership within the last 10 years as provided in subdivision (1) of this section, and any school located in another state which applies for a permit hereunder, shall provide a surety bond as determined by the council. The form of the bond shall be approved by the Chancellor and may include, at the option of the school, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, submission of a letter of credit or a combination of these methods. If collateral bonding is used, the school may elect to deposit cash or collateral securities or certificates as follows: bonds of the United States or its possessions; full faith and credit general obligations bonds of the State of West Virginia or other states and of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the council. The cash deposit or market value of the securities or certificates shall be equal to or greater than the penal sum of the bond. The Chancellor shall, upon receipt of any deposit of cash, securities or certificates, promptly place the same with the Treasurer of the State of West Virginia, whose duty it is to receive and hold the deposit in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The school making the deposit is entitled, from time to time, to receive from the State Treasurer, upon the written approval of the Chancellor, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him or her in lieu thereof cash or other securities or certificates of the classes specified in this subsection having value equal to or greater than the sum of the bond.

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(3) Any school may be required to increase its bond to $150,000 if either of the following conditions apply:

(A) The school's accreditation is terminated for cause; or

(B) The school's institutional eligibility under the Higher Education Act of 1965, as amended, has been terminated for cause. Expiration, nonrenewal or voluntary relinquishment of accreditation or institutional eligibility under the Higher Education Act, or failure to meet the requirements of one or more programs under the Act, are not considered to be a termination for cause.

(4) Any school may be required to increase its bond to an amount not to exceed $400,000 if, in accordance with the standards of the American Institute of Certified Public Accountants, the school's audited financial statements are qualified because the school's continued financial viability as an ongoing concern is in doubt and the council determines an increased bond is reasonably necessary to protect the financial obligations legally due the students then enrolled at the institution.

(A) A school may be required to maintain the increased bonding requirements described above until all students attending classes at the date of termination either graduate or withdraw.

(B) The bond may be continuous and shall be conditioned to provide indemnification to any student suffering loss as a result of any fraud or misrepresentation used in procuring the student's enrollment, failure of the school to meet contractual obligations, or failure of the school to meet the requirements of this section.

(C) The bond shall be given by the school itself as a blanket bond covering all of its representatives.

(5) The surety on a bond or other collateral may be released upon giving 30 days' notice in writing to the principal on the bond and to the council and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the release. Upon 10 days' written notice, the council shall suspend the permit when the proprietary school is no longer covered by a surety bond or other collateral as required by this section, and the suspension shall remain in effect until the school obtains another bond or establishes other collateral and posts it in the same manner and like amount as required for the initial bond.

(e) A permit is valid for one year corresponding to the effective date of the bond and may be renewed upon application, accompanied by the required fee and the surety bond as herein required. All fees collected for the issuance or renewal of a permit shall be deposited in the State Treasury to the credit of the council.

(f) The council may refuse a permit to any school if the council finds that the school engages in practices which are inconsistent with this section or with rules issued pursuant thereto.

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(g) A permit issued hereunder may be suspended or revoked by the council for fraud or misrepresentation in soliciting or enrolling students, for failure of the school to fulfill its contract with one or more students who are residents of West Virginia or for violation of or failure to comply with any provision of this section or with any regulation of the council pertinent thereto.

(1) Before taking any action to suspend or revoke a school's permit, the council shall give the school 15 days' notice and convene a hearing, if a hearing is requested by the school.

(2) Prior to the council taking any adverse action, including refusal, suspension or revocation of a permit, the council shall give the school reasonable opportunity to take corrective measures.

(3) Any refusal, suspension or revocation of a permit, or any other adverse action against a school, shall comply with all constitutional provisions, including due process, relating to the protection of property rights.

(h) All correspondence, business, occupational or trade schools which have been issued a permit shall make annual reports to the council on forms furnished by the council and shall provide such appropriate information as the council reasonably may require. All correspondence, business, occupational or trade schools which have been issued a permit shall furnish to the council a list of its official representatives. Each school shall be issued a certificate of identification by the council for each of its official representatives.

(i) The issuance of a permit pursuant to this section does not constitute approval or accreditation of any course or school. No school, nor any representative of a school, may make any representation stating, asserting or implying that a permit issued pursuant to this section constitutes approval or accreditation by the State of West Virginia, council or any other department or agency of the state.

(j) The council may adopt rules and conduct on-site reviews to evaluate academic standards maintained by schools for the awarding of certificates, diplomas, associate degrees and specialized associate degrees.

(1) These standards may include curriculum, personnel, facilities, materials and equipment.

(2) For accredited correspondence, business, occupational and trade schools under permit on July 1, 1979, which have their physical facilities located in this state and which are accredited by the appropriate nationally recognized accrediting agency or association approved by the United States Department of Education, the accrediting agency's standards, procedures and criteria are accepted as meeting applicable laws, standards and rules of the council.

(3) Institutions which are institutionally accredited by accrediting agencies recognized by the United States Department of Education to establish academic standards for post-

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secondary education may offer post-secondary educational programs leading to certificates, diplomas and associate degrees and may award certificates, diplomas and associate degrees to graduates who successfully complete required programs in accordance with the academic standards required by such accrediting agency.

(4) If a review undertaken by the council indicates there may be deficiencies in the academic standards the institution maintains in its educational programs and if such deficiencies are of such a material nature that they jeopardize continued accreditation, the council shall notify the institution. If the council and the institution are unable to agree on the deficiencies or the steps necessary to correct the deficiencies, the council shall consult with the institution's accrediting agency regarding an academically appropriate resolution which may include a joint on-site review by the council and the accrediting agency.

(5) The council also may review the academic standards of unaccredited institutions and may require such institutions to maintain recognized academic standards that are reasonably appropriate to the nature of the institution and the training offered.

(k) The council may authorize an investigation of written student complaints alleging a violation of this section, council rules or accreditation standards and may take appropriate action based on the findings of such an investigation.

(l) All evaluations or investigations of correspondence, business, occupational and trade schools and actions resulting from such evaluations or investigations shall be made in accordance with rules promulgated by the council pursuant to §29A-3A-1 *et seq.* of this code.

(m) In regard to private, proprietary educational institutions operating under this section of the code, accredited by a national or regional accrediting agency or association recognized by the United States Department of Education and which provide training at a campus located in this state:

(1) Any rule or standard which is authorized by this or any section of the code or other law and which is now in effect or promulgated hereafter by the council (or other agency with jurisdiction) shall be clearly, specifically and expressly authorized by narrowly construed enabling law and shall be unenforceable and without legal effect unless authorized by an Act of the Legislature under the provisions of §29A-3A- 1 *et seq.* of this code.

(2) Notwithstanding any other provision of this section or other law to the contrary, the institution's accrediting agency standards, procedures and criteria shall be accepted as the standards and rules of the council (or other agency with jurisdiction) and as meeting other law or legal requirements relating to the operation of proprietary institutions which such council or other agency has the legal authority to enforce under any section of the code or other law. Nothing in this section denies students the use of remedies that would otherwise be available under state or federal consumer laws or federal law relating to federal college financial assistance programs.

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(3) Accredited institutions operating hereunder are hereby recognized as postsecondary. Academic progress is measured and reported in credit hours and all reports/documents are filed on a credit-hour basis unless the institution notifies the council that it utilizes clock hours as its unit of measurement.

(n) A representative of any school who solicits, sells or offers to sell courses of instruction to any resident of this state for consideration or remuneration unless the school first applies for a permit, or obtains a permit, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $200 per day per violation, or confined in jail not more than 60 days, or both fined and confined. No correspondence, business, occupational or trade school may maintain an action in any court of this state to recover for services rendered pursuant to a contract solicited by the school if the school did not hold a valid permit at the time the contract was signed by any of the parties thereto. The Attorney General or any county prosecuting attorney, at the request of the council or upon his or her own motion, may bring any appropriate action or proceeding in any court of competent jurisdiction for the enforcement of the provisions of this section relating to permits, bonds and sureties.

(o) In regard to institutions operating under this section, all substantive standards and procedural requirements established by the council (or the West Virginia state program review entity or other agency with jurisdiction over institutions operating hereunder) shall meet all substantive and procedural standards of due process relating to the protection of an individual citizen’s property rights as provided under the United States Constitution and shall follow the substantive standards and procedural requirements established by or under authority of this section.

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