

No: 762

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1987



**ENROLLED**

SENATE BILL NO. 762

(By Senators Craig and Shaw)



PASSED May 28 1987

In Effect From Passage



**ENROLLED**  
**Senate Bill No. 762**  
(BY SENATORS CRAIGO AND SHAW)

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[Passed May 28, 1987; in effect from passage.]

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AN ACT to amend and reenact section one hundred thirty-eight, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to empowering the board of education to promulgate rules and regulations to provide for a policy for refunding the purchase price of any such correspondence course.

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

That section one hundred thirty-eight, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. CONSUMER CREDIT PROTECTION.**

**§46A-2-138. Buyer's right to cancel certain subscriptions and other obligations.**

- 1 (a) When a buyer has become indebted or paid cash on a
- 2 contract for future deliveries of a correspondence course, on
- 3 any contract entered into after the effective date of this
- 4 section for truck driver, modeling or any other occupational
- 5 or business course with a private proprietary school, or a
- 6 multiple magazine subscriptions contract, other than for
- 7 single subscriptions direct with the publisher thereof, the
- 8 buyer may cancel and terminate such contract at any time

9 by mailing a notice of cancellation by first class United  
10 States mail to the person to whom the indebtedness is owed,  
11 or with whom the contract was made, or his assignee, which  
12 notice shall forthwith terminate and cancel any financial  
13 obligation for goods or services not received by the buyer  
14 prior to the mailing of such notice of cancellation. The  
15 indebtedness for correspondence course materials received  
16 and not returned shall not exceed the reasonable store  
17 purchase price of such materials. In addition thereto, in  
18 regard to a correspondence course contract (in part or  
19 wholly by correspondence) the state board of education is  
20 hereby empowered and directed to promulgate rules and  
21 regulations setting forth policy for the refund of tuition fees  
22 or other indebtedness and cancellation in whole or in part of  
23 such a contract by a buyer, with regard to goods and  
24 services not fully delivered. Such rules and regulations  
25 shall include, but not be limited to, provisions for allowing  
26 such cancellation by a buyer by mailing notice of intent to  
27 cancel and returning all materials received, and that the  
28 seller shall return any moneys due buyer within twenty  
29 days upon receipt of the notice of cancellation.

30 (b) Any buyer not receiving a refund of all moneys paid  
31 and due within twenty days of cancellation of any contract  
32 under this section has a direct cause of action upon any  
33 bond filed with the department of education or board of  
34 regents to secure performance of legal obligation pursuant  
35 to the provisions of section ten, article two, chapter  
36 eighteen of this code.

37 (c) Notwithstanding any other provision of law to the  
38 contrary, with respect to contracts which are the subject of  
39 or are intended to become the subject of a transaction as  
40 provided for in this section, no seller shall:

41 (1) Exclude, modify or otherwise attempt to limit any  
42 provision addressed under this section; or

43 (2) Exclude, modify or attempt to limit any remedy  
44 provided by law, including the measure of damages  
45 available under this section.

46 Any such exclusion, modification or attempted limitation  
47 shall be void.

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

*Bruce O. Williams*  
.....  
Chairman Senate Committee

*Bernard V. Kelly*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Judd C. Vicki*  
.....  
Clerk of the Senate

*Donald L. Hogg*  
.....  
Clerk of the House of Delegates

*Dan Tonkovich*  
.....  
President of the Senate

*W. H. Clark*  
.....  
Speaker House of Delegates

The within *approved* this the *9th*  
*June* day of ..... 1987.

*Aura. Pasce Jr.*  
.....  
Governor



PRESENTED TO THE  
GOVERNOR

Date 6/3/87

Time 9:57 a.m.

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE