WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1992

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ENROLLED
Com. Sub. For
HOUSE BILL No. 4018

(By Delegates Roop and Lane)

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Passed March 7, 1992
In Effect From Passage

SECRETARY OF STATE
OFFICE OF WEST VIRGINIA
1992 APR - 1 PM 4:41
RECEIVED
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4018
(BY DELEGATES ROOP AND LANE)
[Passed March 7, 1992; in effect from passage.]

AN ACT to amend and reenact section one hundred three, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article three, chapter eighteen-b of said code; all relating to student loans for post-secondary education at eligible schools including private proprietary schools; exempting lenders of guaranteed student loans after stated date from being subject to consumer credit claims and defenses under West Virginia consumer credit and protection act; directing board of directors to promulgate various rules relating to private, proprietary, post-secondary schools in accordance with legislative oversight commission on education accountability rule-making provisions; exempting school teaching preparation of tax returns; increasing initial and annual fee for permit for such schools; and requiring additional bonding for private proprietary schools under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That section one hundred three, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that
section five, article three, chapter eighteen-b of said code be amended and reenacted, all to read as follows:

CHAPTER 46. UNIFORM COMMERCIAL CODE.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-103. Lender subject to claims and defenses arising from sales.

(a) The following provisions shall be applicable to claims and defenses of borrowers, arising from consumer sales, with respect to consumer loans:

A lender, other than the issuer of a lender credit card or a lender of a student loan made on or after the first day of July, one thousand nine hundred ninety-two, in accordance with the federal higher education act of 1965, as amended, who, with respect to a particular transaction, makes a consumer loan for the purpose of enabling a borrower to buy goods or services, other than primarily for an agricultural purpose, is subject to all claims and defenses of the borrower against the seller arising from that specific sale of goods or services if the lender participates in or is connected with the sales transaction. A lender is considered to be connected with such sales transaction if:

(i) The lender and the seller have arranged for a commission or brokerage or referral fee for the extension of credit by the lender;

(ii) The lender is a person related to the seller unless the relationship is remote or is not a factor in the transaction;

(iii) The seller guarantees the loan or otherwise assumes the risk of loss by the lender upon the loan other than a risk of loss arising solely from the seller's failure to perfect a lien securing the loan;

(iv) The lender directly supplies the seller with documents used by the borrower to evidence the transaction or the seller directly supplies the lender with documents used by the borrower to evidence the transaction;
(v) The loan is conditioned upon the borrower's purchase of the goods or services from the particular seller, but the lender's payment of proceeds of the loan to the seller does not in itself establish that the loan was so conditioned;

(vi) The seller in such sale has specifically recommended such lender by name to the borrower and the lender has made ten or more loans to borrowers within a period of twelve months within which period the loan in question was made, the proceeds of which other ten or more loans were used in consumer credit sales with the seller or a person related to the seller, if in connection with such other ten or more loans, the seller also specifically recommended such lender by name to the borrowers involved; or

(vii) The lender was the issuer of a credit card other than a lender credit card which may be used by the borrower in the sale transaction as a result of a prior agreement between the issuer and the seller.

(b) The total of all claims and defenses which a borrower is permitted to assert against a lender under the provisions of this section shall not exceed that portion of the loan used for that sale, except (1) as to any claim or defense founded in fraud: Provided, That as to any claim or defense founded in fraud arising on or after the first day of July, one thousand nine hundred ninety, the total sought shall not exceed the original amount of the sale and (2) for any excess charges and penalties recoverable under section one hundred one, article five of this chapter.

(c) An agreement may not limit or waive the claims and defenses of a borrower under this section.

(d) "Lender credit card" as used in this section means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using the credit card in transactions which entitles the user thereof to purchase goods or services from at least one hundred persons not related to the issuer of the lender credit card, out of which debt arises:
(1) By the lender's honoring a draft or similar order for the payment of money drawn or accepted by the consumer;

(2) By the lender's payment or agreement to pay the consumer's obligation; or

(3) By the lender's purchase from the obligee of the consumer's obligations.

(e) A claim or defense which a borrower may assert against a lender under the provisions of this section may be asserted only as a defense to or setoff against a claim by the lender: Provided, That if a borrower shall have a claim or defense which could be asserted under the provisions of this section as a matter of defense to or setoff against a claim by the lender were such lender to assert such claim against the borrower, then the borrower shall have the right to institute and maintain an action or proceeding seeking to obtain the cancellation, in whole or in part, of the indebtedness evidenced by a negotiable instrument or other instrument or the release, in whole or in part, of any lien upon real or personal property securing the payment thereof: Provided, however, That any claim or defense founded in fraud, lack or failure of consideration or a violation of the provisions of this chapter as specified in section one hundred one, article five of this chapter, may be asserted by a borrower at any time, subject to the provisions of this code relating to limitation of actions.

(f) Nothing contained in this section shall be construed in any manner as affecting any loan made prior to the operative date of this chapter.

(g) Notwithstanding any provisions of this section, a lender shall not be subject to any claim or defense arising from or growing out of personal injury or death resulting therefrom or damage to property.

(h) Nothing contained in this section shall be construed as affecting any buyer's or lessee's right of action, claim or defense which is otherwise provided for in this code or at common law.
CHAPTER 18B. HIGHER EDUCATION.

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 and regulations; penalty and enforcement.

(a) It shall be unlawful for any person representing a correspondence, business, occupational or trade school inside or outside this state, as such shall be defined by the board of directors by rule promulgated in accordance with article three-a, chapter twenty-nine-a 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 obtains a permit from the West Virginia board of directors in the manner and on the terms herein prescribed: Provided, That this section shall not apply to schools where the courses of instruction offered are solely for the purpose of teaching preparation of tax returns.

The application for a permit shall be made on forms to be furnished by the board. An initial application fee of not less than one thousand dollars, but not more than ten thousand dollars, shall be required for a permit for each school newly permitted after the effective date of this section, the amount of such fee to be determined in accordance with objective criteria set forth in rules which shall be promulgated by the board of directors in accordance with article three-a, chapter twenty-nine-a of this code. Thereafter, a five hundred dollar annual fee for each campus shall be required.

(b) The application shall be accompanied by a surety bond in the penal sum of thirty-five thousand dollars for any school which has its physical facilities located in this state and which has operated in this state for at least ten years. For any other school, a surety bond in the penal sum of not less than thirty-five thousand dollars, but not more than two hundred thousand dollars, shall be required, such amount to be determined in accor-
dance with objective criteria set forth in rules which shall be promulgated by the board of directors in accordance with article three-a, chapter twenty-nine-a of this code. Such rules shall also set forth objective criteria by which any school under bond pursuant to this section may be required to post an additional amount of surety bond, but not more than two hundred thousand dollars, such criteria to indicate circumstances which may necessitate the need for additional surety bond. Schools with more than one campus within the state shall be required to provide a bond for each of its campuses in an amount equal to the bond required for its oldest established campus in this state. 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 or failure of the school to meet contractual obligations. The bond shall be given by the school itself as a blanket bond covering all of its representatives. The surety on any such bond may cancel the same upon giving thirty days' notice in writing to the principal on said bond and to the state board of directors and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation.

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

The board may refuse a permit to any school if the board finds that the school engages in practices which are inconsistent with this section or with rules and regulations issued pursuant thereto. A permit issued hereunder, upon fifteen days' notice and after a hearing, if a hearing is requested by the school, may be suspended or revoked by the board of directors 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 state board
of directors pertinent thereto. Prior to the board taking
any adverse action, including refusal, suspension or
revocation of a permit, the school shall be given
reasonable opportunity to take corrective measures. 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.

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

(e) 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 shall 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, state board of directors or any other
department or agency of the state.

The board of directors is hereby authorized to adopt
rules and conduct on-site reviews to evaluate academic
standards maintained by schools for the awarding of
certificates, diplomas and specialized associate degrees,
which standards may include curriculum, personnel,
facilities, materials and equipment: Provided, That in
the case of accredited correspondence, business, occupa-
tional and trade schools under permit on the first day
of July, one thousand nine hundred seventy-nine, having
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 shall be accepted as meeting applicable laws, standards, rules and regulations of the board of directors: Provided, however, That such rules as shall be adopted by the board of directors which are applicable to correspondence, business, occupational and trade schools which were not under permit on the first day of July, one thousand nine hundred seventy-nine, may be different from the standards, procedures and criteria of an accrediting agency: Provided further, That the board of directors may authorize an investigation of written student complaints alleging a violation of this section, board rules, or accreditation standards and may take appropriate action based on the findings of such an investigation. 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 board of directors pursuant to article three-a, chapter twenty-nine-a of this code.

The board of directors is hereby authorized to adopt rules for the awarding of any specialized associate degree by accredited proprietary institutions: Provided, That nothing contained herein shall infringe upon the rights of accredited West Virginia proprietary schools operating in West Virginia to confer specialized associate degrees, diplomas or certificates based on credit or clock hours in accordance with standards of the appropriate nationally recognized accrediting agency or association that is approved by the United States department of education. For the purposes of this section, proprietary schools that award specialized associate degrees shall be defined as institutions of higher education, and specialized associate degrees shall mean degrees awarded by such institutions pursuant to a program of not less than two academic years: Provided, however, That nothing herein shall be construed to qualify the said proprietary schools for additional state moneys not otherwise qualified for under other provisions of the code.
(f) 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 board of directors (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 article three-a, chapter twenty-nine-a of the 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 board of directors (or other agency with jurisdiction), and as meeting other law or legal requirements relating to the operation of proprietary institutions which such board or other agency has the legal authority to enforce under any section of the code or other law: Provided, That nothing in this section shall be construed to deny 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.

(3) Accredited institutions operating hereunder are hereby recognized as postsecondary. Academic progress shall be measured and reported in credit hours and all reports/documents filed on a credit hour basis.

(g) A representative of any school violating any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two hundred dollars per day of violation, not to exceed a maximum of two thousand dollars per violation, or imprisoned in the county jail not more than sixty days, or both fined and imprisoned. No correspon-
dence, business, occupational or trade school shall 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 board of directors 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 15th day of April, 1992.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/15/92
Time 4:00 pm