

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



ENROLLED


Com. Sub. For
HOUSE BILL No. 4018

(By Delegates *Roop and Lane*)



Passed *March 7,* 1992

In Effect *From* Passage

®  C. 041

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4018
(By DELEGATES ROOP AND LANE)

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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.

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

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

17 (i) The lender and the seller have arranged for a
18 commission or brokerage or referral fee for the exten-
19 sion of credit by the lender;

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

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

27 (iv) The lender directly supplies the seller with
28 documents used by the borrower to evidence the
29 transaction or the seller directly supplies the lender
30 with documents used by the borrower to evidence the
31 transaction;

32 (v) The loan is conditioned upon the borrower's
33 purchase of the goods or services from the particular
34 seller, but the lender's payment of proceeds of the loan
35 to the seller does not in itself establish that the loan was
36 so conditioned;

37 (vi) The seller in such sale has specifically recom-
38 mended such lender by name to the borrower and the
39 lender has made ten or more loans to borrowers within
40 a period of twelve months within which period the loan
41 in question was made, the proceeds of which other ten
42 or more loans were used in consumer credit sales with
43 the seller or a person related to the seller, if in
44 connection with such other ten or more loans, the seller
45 also specifically recommended such lender by name to
46 the borrowers involved; or

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

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

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

64 (d) "Lender credit card" as used in this section means
65 an arrangement or loan agreement, other than a seller
66 credit card, pursuant to which a lender gives a debtor
67 the privilege of using the credit card in transactions
68 which entitles the user thereof to purchase goods or
69 services from at least one hundred persons not related
70 to the issuer of the lender credit card, out of which debt
71 arises:

72 (1) By the lender's honoring a draft or similar order
73 for the payment of money drawn or accepted by the
74 consumer;

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

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

79 (e) A claim or defense which a borrower may assert
80 against a lender under the provisions of this section may
81 be asserted only as a defense to or setoff against a claim
82 by the lender: *Provided*, That if a borrower shall have
83 a claim or defense which could be asserted under the
84 provisions of this section as a matter of defense to or
85 setoff against a claim by the lender were such lender
86 to assert such claim against the borrower, then the
87 borrower shall have the right to institute and maintain
88 an action or proceeding seeking to obtain the cancella-
89 tion, in whole or in part, of the indebtedness evidenced
90 by a negotiable instrument or other instrument or the
91 release, in whole or in part, of any lien upon real or
92 personal property securing the payment thereof: *Pro-*
93 *vided, however*, That any claim or defense founded in
94 fraud, lack or failure of consideration or a violation of
95 the provisions of this chapter as specified in section one
96 hundred one, article five of this chapter, may be
97 asserted by a borrower at any time, subject to the
98 provisions of this code relating to limitation of actions.

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

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

106 (h) Nothing contained in this section shall be
107 construed as affecting any buyer's or lessee's right of
108 action, claim or defense which is otherwise provided for
109 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.

1 (a) It shall be unlawful for any person representing
2 a correspondence, business, occupational or trade school
3 inside or outside this state, as such shall be defined by
4 the board of directors by rule promulgated in accor-
5 dance with article three-a, chapter twenty-nine-a of this
6 code, to solicit, sell or offer to sell courses of instruction
7 to any resident of this state for consideration or
8 remuneration unless the school first obtains a permit
9 from the West Virginia board of directors in the manner
10 and on the terms herein prescribed: *Provided*, That this
11 section shall not apply to schools where the courses of
12 instruction offered are solely for the purpose of teaching
13 preparation of tax returns.

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

25 (b) The application shall be accompanied by a surety
26 bond in the penal sum of thirty-five thousand dollars for
27 any school which has its physical facilities located in this
28 state and which has operated in this state for at least
29 ten years. For any other school, a surety bond in the
30 penal sum of not less than thirty-five thousand dollars,
31 but not more than two hundred thousand dollars, shall
32 be required, such amount to be determined in accor-

33 dance with objective criteria set forth in rules which
34 shall be promulgated by the board of directors in
35 accordance with article three-a, chapter twenty-nine-a
36 of this code. Such rules shall also set forth objective
37 criteria by which any school under bond pursuant to this
38 section may be required to post an additional amount
39 of surety bond, but not more than two hundred thousand
40 dollars, such criteria to indicate circumstances which
41 may necessitate the need for additional surety bond.
42 Schools with more than one campus within the state
43 shall be required to provide a bond for each of its
44 campuses in an amount equal to the bond required for
45 its oldest established campus in this state. The bond may
46 be continuous and shall be conditioned to provide
47 indemnification to any student suffering loss as a result
48 of any fraud or misrepresentation used in procuring the
49 student's enrollment or failure of the school to meet
50 contractual obligations. The bond shall be given by the
51 school itself as a blanket bond covering all of its
52 representatives. The surety on any such bond may
53 cancel the same upon giving thirty days' notice in
54 writing to the principal on said bond and to the state
55 board of directors and thereafter shall be relieved of
56 liability for any breach of condition occurring after the
57 effective date of said cancellation.

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

65 The board may refuse a permit to any school if the
66 board finds that the school engages in practices which
67 are inconsistent with this section or with rules and
68 regulations issued pursuant thereto. A permit issued
69 hereunder, upon fifteen days' notice and after a hearing,
70 if a hearing is requested by the school, may be sus-
71 pended or revoked by the board of directors for fraud
72 or misrepresentation in soliciting or enrolling students,
73 for failure of the school to fulfill its contract with one

74 or more students who are residents of West Virginia, or
75 for violation of or failure to comply with any provision
76 of this section or with any regulation of the state board
77 of directors pertinent thereto. Prior to the board taking
78 any adverse action, including refusal, suspension or
79 revocation of a permit, the school shall be given
80 reasonable opportunity to take corrective measures. Any
81 refusal, suspension or revocation of a permit, or any
82 other adverse action against a school, shall comply with
83 all constitutional provisions, including due process,
84 relating to the protection of property rights.

85 (d) All correspondence, business, occupational or
86 trade schools which have been issued a permit shall
87 make annual reports to the board of directors on forms
88 furnished by the board and shall provide such appropriate
89 information as the board reasonably may require.
90 All correspondence, business, occupational or trade
91 schools which have been issued a permit shall furnish
92 to the board of directors a list of its official representatives.
93 Each school shall be issued a certificate of
94 identification by the board of directors for each of its
95 official representatives.

96 (e) The issuance of a permit pursuant to this section
97 does not constitute approval or accreditation of any
98 course or school. No school nor any representative of a
99 school shall make any representation stating, asserting
100 or implying that a permit issued pursuant to this section
101 constitutes approval or accreditation by the state of
102 West Virginia, state board of directors or any other
103 department or agency of the state.

104 The board of directors is hereby authorized to adopt
105 rules and conduct on-site reviews to evaluate academic
106 standards maintained by schools for the awarding of
107 certificates, diplomas and specialized associate degrees,
108 which standards may include curriculum, personnel,
109 facilities, materials and equipment: *Provided*, That in
110 the case of accredited correspondence, business, occupational
111 and trade schools under permit on the first day
112 of July, one thousand nine hundred seventy-nine, having
113 their physical facilities located in this state, and which
114 are accredited by the appropriate nationally recognized

115 accrediting agency or association approved by the
116 United States department of education, the accrediting
117 agency's standards, procedures and criteria shall be
118 accepted as meeting applicable laws, standards, rules
119 and regulations of the board of directors: *Provided,*
120 *however,* That such rules as shall be adopted by the
121 board of directors which are applicable to correspon-
122 dence, business, occupational and trade schools which
123 were not under permit on the first day of July, one
124 thousand nine hundred seventy-nine, may be different
125 from the standards, procedures and criteria of an
126 accrediting agency: *Provided further,* That the board of
127 directors may authorize an investigation of written
128 student complaints alleging a violation of this section,
129 board rules, or accreditation standards and may take
130 appropriate action based on the findings of such an
131 investigation. All evaluations or investigations of
132 correspondence, business, occupational and trade
133 schools, and actions resulting from such evaluations or
134 investigations, shall be made in accordance with rules
135 promulgated by the board of directors pursuant to
136 article three-a, chapter twenty-nine-a of this code.

137 The board of directors is hereby authorized to adopt
138 rules for the awarding of any specialized associate
139 degree by accredited proprietary institutions: *Provided,*
140 That nothing contained herein shall infringe upon the
141 rights of accredited West Virginia proprietary schools
142 operating in West Virginia to confer specialized
143 associate degrees, diplomas or certificates based on
144 credit or clock hours in accordance with standards of the
145 appropriate nationally recognized accrediting agency or
146 association that is approved by the United States
147 department of education. For the purposes of this
148 section, proprietary schools that award specialized
149 associate degrees shall be defined as institutions of
150 higher education, and specialized associate degrees shall
151 mean degrees awarded by such institutions pursuant to
152 a program of not less than two academic years:
153 *Provided, however,* That nothing herein shall be
154 construed to qualify the said proprietary schools for
155 additional state moneys not otherwise qualified for
156 under other provisions of the code.

157 (f) In regard to private, proprietary educational
158 institutions operating under this section of the code,
159 accredited by a national or regional accrediting agency
160 or association recognized by the United States depart-
161 ment of education and which provide training at a
162 campus located in this state:

163 (1) Any rule or standard which is authorized by this
164 or any section of the code or other law, and which is now
165 in effect or promulgated hereafter by the board of
166 directors (or other agency with jurisdiction) shall be
167 clearly, specifically, and expressly authorized by
168 narrowly construed enabling law and shall be
169 unenforceable and without legal effect unless authorized
170 by an act of the Legislature under the provisions of
171 article three-a, chapter twenty-nine-a of the code.

172 (2) Notwithstanding any other provision of this
173 section or other law to the contrary, the institution's
174 accrediting agency standards, procedures, and criteria
175 shall be accepted as the standards and rules of the board
176 of directors (or other agency with jurisdiction), and as
177 meeting other law or legal requirements relating to the
178 operation of proprietary institutions which such board
179 or other agency has the legal authority to enforce under
180 any section of the code or other law: *Provided*, That
181 nothing in this section shall be construed to deny
182 students the use of remedies that would otherwise be
183 available under state or federal consumer laws or
184 federal law relating to federal college financial assist-
185 ance programs.

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

190 (g) A representative of any school violating any
191 provision of this section shall be guilty of a misdemea-
192 nor, and, upon conviction thereof, shall be fined not
193 more than two hundred dollars per day of violation, not
194 to exceed a maximum of two thousand dollars per
195 violation, or imprisoned in the county jail not more than
196 sixty days, or both fined and imprisoned. No correspon-

197 dence, business, occupational or trade school shall
198 maintain an action in any court of this state to recover
199 for services rendered pursuant to a contract solicited by
200 the school if the school did not hold a valid permit at
201 the time the contract was signed by any of the parties
202 thereto. The attorney general or any county prosecuting
203 attorney, at the request of the board of directors or upon
204 his or her own motion, may bring any appropriate action
205 or proceeding in any court of competent jurisdiction for
206 the enforcement of the provisions of this section relating
207 to permits, bonds and sureties.

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

Horner Leck

Chairman Senate Committee

Ernest C Moore

Chairman House Committee

Originating in the House.

Takes effect from passage.

Harold E. Adams
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Keith Burdette
President of the Senate

Robert C. Bell
Speaker of the House of Delegates

The within is approved this the *12* day of *April*, 1992.

Yaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/92

Time 4:40pm