WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1994

ENROLLED

SENATE BILL NO. 442

(By Senators Lucht & Burdette, Mr. President)

PASSED March 12, 1994

In Effect 90 days from Passage
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[Passed March 12, 1994; in effect ninety days from passage.]

AN ACT to amend and reenact section five, article three, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to regulation of certain schools; requiring a permit from the board of directors of the state college system; establishing a permit fee and a permit renewal fee; requiring certain bonds; providing for fines for certain solicitations and advertisements; providing a method for resolving disputes; and declaring certain due process rights.

Be it enacted by the Legislature of West Virginia:

That section five, article three, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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; penalty and enforcement.

1 (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
applies for a permit or obtains a permit from the West
Virginia board of directors in the manner and on the
terms herein prescribed.

All private training or educational institution, school
or academy or other organization shall apply for a
permit from the board of directors of the state college
system on forms provided by the board. This section
does not apply to private organizations that offer only
tax return preparation courses. Each initial application
shall be accompanied by a nonrefundable fee of two
thousand dollars. The board may also assess an addi-
tional fee based on any additional expense required to
evaluate the application. The board shall make a
determination on the initial permit application within
ninety days after receipt of the application and fee. 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 instruc-
tional equipment, books and supplies and personnel
are in place and ready for operation. A representative
of the board shall make an on-site visit to all new
applicants' facilities to confirm its readiness for
operation prior to issuance of the initial permit if the
facilities are located in West Virginia.

A school is considered to be established under the
provisions of this article on the date it first begins to
lawfully operate. An established school is not required
to reapply for a permit as a result of changes in
governance; administration; ownership; or form of
operation. After the first permit year an annual fee of
five hundred dollars is imposed on each school for
each campus it operates in this state.

(b) Each 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: Provided, That if the school
has changed ownership within the last ten 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 of thirty five thousand dollars: Provided,
however, That any school which has operated in West
Virginia for less than ten years, including those
schools which have changed ownership within the last
ten years except those schools noted above who have
transferred ownership control to a spouse, parent,
sibling, child or grandchild of the previous owner
within the last ten years and any school located in
another state which applies for a permit hereunder,
shall provide a surety bond of fifty thousand dollars:
Provided, further, That any school may be required to
increase its bond to one hundred fifty thousand dollars
if its accreditation is terminated for cause or if the
school's institutional eligibility under the Higher
Education Act of 1965, as amended, has been termin-
ed for cause: And provided further, That expiration,
onrenewal or voluntary relinquishment of accredita-
tion or institutional eligibility under said act, or failure
to meet the requirements of one or more programs
under said act, shall not be deemed a termination for
cause.

In addition, any school may be required to increase
its bond to an amount not to exceed four hundred
thousand dollars if, in accordance with the standards
of the American institute of certified public accoun-
tants, the school's audited financial statements are
qualified because the school's continued financial
viability as an ongoing concern is in doubt, and the
board of directors determines an increased bond is
reasonably necessary to protect the financial obliga-
tions legally due the students then enrolled at the
institution. A school may be required to maintain the
increased bonding requirements described above until
all students attending classes at the date of termina-
tion either graduate or withdraw. The bond may be
continuous and shall be conditioned to provide indem-
nification 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. 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 appropriate 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 representatives. 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, occupational 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 and rules of the board of directors: Provided, however, That institutions, which are institutionally accredited by accrediting agencies that are recognized by the United States department of education to establish academic standards for postsecondary education, may offer postsecondary educational programs leading to (and upon successful completion of such programs award graduates) certificates,
diplomas and associate degrees in accordance with the academic standards required by such accrediting agency. If a review undertaken by the board indicates there may be deficiencies in the academic standards the institution maintains in its educational programs, that are of such a material nature as to jeopardize continued accreditation, the board shall notify the institution. If the board and the institution are unable to agree on the deficiencies or the steps necessary to correct the deficiencies, the board shall consult with the institution’s accrediting agency regarding an academically appropriate resolution, which resolution may include a joint on-site review by the board and the accrediting agency. The board may also 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. 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.

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, 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 unless the institution notifies the board that it utilizes clock hours as its unit of measurement.

(g) 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, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more that two hundred dollars per day per violation, or imprisoned in the county jail not more than sixty days, or both
fined and imprisoned. No correspondence, 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.

(h) In regard to institutions operating under this section, all substantive standards and procedural requirements established by the board of directors (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 for under the United States Constitution, and shall follow the substantive standards and procedural requirements established by or under authority of this section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within bill passed this the day of March, 1994.

Governor