

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4077**

BY DELEGATES HIGGINBOTHAM AND ELLINGTON

BY REQUEST OF THE HIGHER EDUCATION POLICY

COMMISSION

[Introduced January 09, 2020; Referred to the Committee  
on Education]

1 A BILL to amend and reenact §18B-2B-9 of the Code of West Virginia, 1931, as amended, relating  
 2 to increasing the amount of the bond required to be posted by proprietary schools;  
 3 establishing methods of bonding; and requiring suspension of a proprietary school’s permit  
 4 if there is not required bond coverage.

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

**ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION.**

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

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

3 (1) “Proprietary schools that award specialized associate degrees” means institutions of  
 4 higher education; and

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

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

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

16 Directors and transferred to the council by §18B-2B-6 of this code remains in effect until rescinded  
17 or amended by the council.

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

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

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

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

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

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

35 (d) Each application for a proprietary school that has its physical facilities in this state shall  
36 be accompanied by a surety bond in the penal sum of \$35,000 for any school which has its  
37 physical facilities located in this state and which has operated in this state for at least 10 years  
38 penal bond, on a form to be prescribed and furnished by the council, payable to the State of West  
39 Virginia and conditioned upon the school faithfully performing all of the requirements of this  
40 section, the rules promulgated hereunder, and the permit. The penal amount of the bond, as  
41 determined by the council, may not be less than \$50,000 nor more than \$100,000.

42 (1) If the school has changed ownership within the last 10 years by transfer of ownership  
43 control to a person who is a spouse, parent, sibling, child or grandchild of the previous owner, the  
44 surety bond shall continue in the penal sum of \$35,000. The period of liability for bond coverage  
45 begins with the issuance of the permit and continues for the full term of the permit, plus any  
46 renewals thereof. The council shall release the bond upon satisfaction that the conditions thereof  
47 have been fully performed. Upon release of the bond, any cash or collateral securities deposited  
48 by the school shall be returned to the school that deposited the same.

49 (2) Any school which has operated in West Virginia for fewer than 10 years, excluding  
50 those schools which have changed ownership within the last 10 years as provided in subdivision  
51 (1) of this section, and any school located in another state which applies for a permit hereunder,  
52 shall provide a surety bond of \$50,000. The form of the bond shall be approved by the Chancellor  
53 and may include, at the option of the school, surety bonding, collateral bonding (including cash  
54 and securities), establishment of an escrow account, submission of a letter of credit or a  
55 combination of these methods. If collateral bonding is used, the school may elect to deposit cash  
56 or collateral securities or certificates as follows: bonds of the United States or its possessions; full  
57 faith and credit general obligations bonds of the State of West Virginia or other states and of any  
58 county, district or municipality of the State of West Virginia or other states; or certificates of deposit  
59 in a bank in this state, which certificates shall be in favor of the council. The cash deposit or  
60 market value of the securities or certificates shall be equal to or greater than the penal sum of the  
61 bond. The Chancellor shall, upon receipt of any deposit of cash, securities or certificates, promptly  
62 place the same with the Treasurer of the State of West Virginia, whose duty it is to receive and  
63 hold the deposit in the name of the state in trust for the purpose for which the deposit is made  
64 when the permit is issued. The school making the deposit is entitled, from time to time, to receive  
65 from the State Treasurer, upon the written approval of the Chancellor, the whole or any portion of  
66 any cash, securities or certificates so deposited, upon depositing with him or her in lieu thereof  
67 cash or other securities or certificates of the classes specified in this subsection having value

68 equal to or greater than the sum of the bond.

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

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

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

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

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

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

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

91 ~~(D)~~ (5) The surety on a bond or other collateral may ~~cancel the same~~ be released upon  
92 giving 30 days' notice in writing to the principal on the bond and to the ~~state~~ council and thereafter  
93 shall be relieved of liability for any breach of condition occurring after the effective date of the

94 ~~cancellation~~ release. Upon 10 days' written notice, the council shall suspend the permit when the  
95 proprietary school is no longer covered by a surety bond or other collateral as required by this  
96 section, and the suspension shall remain in effect until the school obtains another bond or  
97 establishes other collateral and posts it in the same manner and like amount as required for the  
98 initial bond.

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

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

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

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

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

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

117 (h) All correspondence, business, occupational or trade schools which have been issued  
118 a permit shall make annual reports to the council on forms furnished by the council and shall  
119 provide such appropriate information as the council reasonably may require. All correspondence,

120 business, occupational or trade schools which have been issued a permit shall furnish to the  
121 council a list of its official representatives. Each school shall be issued a certificate of identification  
122 by the council for each of its official representatives.

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

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

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

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

138 (3) Institutions which are institutionally accredited by accrediting agencies recognized by  
139 the United States Department of Education to establish academic standards for post-secondary  
140 education may offer post-secondary educational programs leading to certificates, diplomas and  
141 associate degrees and may award certificates, diplomas and associate degrees to graduates who  
142 successfully complete required programs in accordance with the academic standards required by  
143 such accrediting agency.

144 (4) If a review undertaken by the council indicates there may be deficiencies in the  
145 academic standards the institution maintains in its educational programs and if such deficiencies

146 are of such a material nature that they jeopardize continued accreditation, the council shall notify  
147 the institution. If the council and the institution are unable to agree on the deficiencies or the steps  
148 necessary to correct the deficiencies, the council shall consult with the institution's accrediting  
149 agency regarding an academically appropriate resolution which may include a joint on-site review  
150 by the council and the accrediting agency.

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

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

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

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

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

169 (2) Notwithstanding any other provision of this section or other law to the contrary, the  
170 institution's accrediting agency standards, procedures and criteria shall be accepted as the  
171 standards and rules of the council (or other agency with jurisdiction) and as meeting other law or



172 legal requirements relating to the operation of proprietary institutions which such council or other  
173 agency has the legal authority to enforce under any section of the code or other law. Nothing in  
174 this section denies students the use of remedies that would otherwise be available under state or  
175 federal consumer laws or federal law relating to federal college financial assistance programs.

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

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

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

NOTE: The purpose of this bill is to increase the amount of the bond required to be posted by proprietary schools, establish methods of bonding, and require suspension of a proprietary school's permit if there is not requisite bond coverage.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.