WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4355

By Delegates Linville, Ellington, Keaton, Haynes, Kimble, Hanna, Maynard, and Wamsley

[Introduced January 24, 2022; referred to the Committee on Education]

A BILL to amend and reenact §18B-10-14 of the Code of West Virginia, 1931, as amended, relating to the disclosure by state institutions of higher education of certain information regarding textbooks and digital courseware and certain charges assessed for those items.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-14. Bookstores.

(a) Each governing board may establish and operate a bookstore at the institutions under its jurisdiction to sell educational materials, books, stationery, and other school and office supplies generally carried in college bookstores.

(b) The prices to be charged may not be less than the prices fixed by any fair trade agreements and shall, in all cases, include in addition to the purchase price paid by the bookstore, a sufficient handling charge to cover all expenses incurred for personal and other services, supplies and equipment, storage, and other operating expenses.

(c) Each governing board shall establish, or if already established, continue, an educational materials affordability committee consisting of faculty, students, administrators and bookstore representatives and the committee shall make recommendations to the governing board to:

(1) Ensure that bookstores operated at institutions under its jurisdiction minimize the costs to students of purchasing educational materials;

(2) Ensure appropriate, high quality course educational materials are selected by course instructors;

(3) Encourage and incentivize the use of previous or older versions of basic educational materials to the extent those older versions are available and less costly to students and remain relevant, high quality educational materials with up-to-date information and content;

(4) Require the repurchase and resale of educational materials on an institutional basis;

(5) Provide for the use of certain basic educational materials for a reasonable number of years;

(6) Encourage and incentivize the use of emerging technologies, such as electronic textbooks, online textbooks, print-on-demand services, and other open resource materials; and

(7) Prohibit employees from profiteering by requiring the purchase of one-time use materials (such as worksheets) or receiving payment or other consideration as an inducement to require students to purchase particular textbooks.

(d) ~~The Legislature recognizes that in 2004, the Congress of the United States commissioned the United States Government Accountability Office to study the high prices of college textbooks. Upon completion of the study, the Legislative Oversight Commission on Education Accountability shall obtain the results and any related reports produced by the office.~~

~~(e)~~ An employee of a governing board:

(1) May not:

(A) Receive a payment, loan, subscription, advance, deposit of money, service, benefit or thing of value, present or promised, as an inducement for requiring students to purchase a specific textbook for coursework or instruction; or

(B) Require for any course a textbook that includes his or her own writing or work if the textbook incorporates either detachable worksheets or workbook-style pages intended to be written on or removed from the textbook. This provision does not prohibit an employee from requiring as a supplement to a textbook any workbook or similar material which is published independently from the textbook; and

(2) May receive:

(A) Sample copies, instructor’s copies and instructional material which are not to be sold; and

(B) Royalties or other compensation from sales of textbooks that include the employee’s own writing or work.

~~(f)~~ (e) A governing board shall provide to students a listing of textbooks required or assigned for any course offered at the institution.

(1) The listing shall be prominently posted:

(A) In a central location at the institution;

(B) In any campus bookstore; and

(C) On the institution’s website.

(2) The list shall include for each textbook the International Standard Book Number (ISBN), the edition number and any other relevant information.

(3) The list shall include whether the textbook is an open educational resource material, and whether all educational materials required for the course or course section are generally available at no cost and without limitation to all students enrolled in the course or course section.

(4) If the student will be automatically charged for the textbook or for access to digital courseware for a course by the institution or another entity on the student’s enrollment in a course, course section, or program or in the institution for the applicable semester or term, the list shall include the disclosures required under subsections (f)-(h) of this section.

~~(3)~~ (5) An institution shall post a book to the listing when the adoption process is complete and, for a textbook that comes at a cost to the student, when the textbook is designated for order by the bookstore.

(f) An institution shall disclose to a student enrolled at the institution as provided by this section an automatic charge for textbooks or access to digital courseware assessed by the institution or another entity to the student on the student’s enrollment in a course, course section, or program or in the institution for the applicable semester or term, regardless of whether the charge is assessed on an opt-in, opt-out, or compulsory basis. This subsection does not apply to a charge assessed for a purchase initiated by the student separately from the enrollment process at the institution, such as the purchase of a textbook at a bookstore that may be charged to the student’s account at the institution.

(g) For a charge described by subsection (f) that is assessed based on the cost of required or recommended textbooks or access to digital courseware for a certain course or course section in which the student is enrolled, the institution shall:

(1) In the listing required under subsection (e), state or provide an internet website link to:

(A) The full amount of the charge;

(B) If the charge is for a textbook in a primarily electronic format or for access to digital courseware, the terms under which the publisher of the textbook or digital courseware collects and uses student data obtained through a student’s use of the textbook or digital courseware; and

(C) Any provision that allows the student to opt in or opt out of the charge or the collection or use of the student’s data; and

(2) Itemize the charge separately from any other charges assessed for the course or course section in the institution’s billing to the student.

(h) For a charge described by subsection (f) that is assessed on the basis of the number of semester credit hours or the equivalent or the number of courses in which the student is enrolled or on any other basis not described by subsection (g), the institution shall:

(1) Except as provided by subsection (i), include the amount of the charge in the institution’s tuition or fees under §18B-10-1 of this code;

(2)  In a prominent location in any written or electronic agreement authorizing the charge, disclose:

(A)  If the charge is for a textbook in a primarily electronic format or for access to digital courseware, the terms under which the publisher of the textbook or digital courseware collects and uses student data obtained through a student’s use of the textbook or digital courseware; and

(B)  Any provision that allows the student to opt in or opt out of the charge or the collection or use of the student’s data; and

(3) Not assess the charge to a student for a course or course section for which all required educational materials are generally available at no cost in at least one form to the student, such as:

(A) An open educational resource material;

(B) Digital materials available at no cost through a multi-user license held by the institution’s library; or

(C) Other materials generally available at no cost and without limitation to all students enrolled in the course or course section.

(i)  Notwithstanding subsection (h)(1), an institution is not required to include the amount of a charge described by that subsection in the institution’s tuition or fees if the charge is assessed to a student only on an opt-in basis. For purposes of this subsection, a charge is not considered to be assessed on an opt-in basis if:

(1)  The textbooks or access to digital courseware for which the charge is assessed are required for the student to earn the maximum possible grade for a course in which the student is enrolled, such as software required to submit homework or exams; and

(2)  For a charge for textbooks, the textbooks may only be legally obtained from the institution or certain vendors specified by the institution.

(j)  An institution may enter into an agreement between the institution and an entity under which the institution assesses on the entity’s behalf or allows the entity to assess a charge described by subsection (f) to students enrolled at the institution only if:

(1) The institution’s educational materials affordability committee established under subsection (c) determines the agreement to be consistent with the goals enumerated in subsection (c);

(2) The governing board of the institution adopts a policy that provides that:

(A) The charge assessed to a student will automatically be removed and, if applicable, promptly refunded, if the student withdraws from the course or course section at any time on or before the last day to withdraw from the course without penalty; and

(B) A student may opt out of the charge at any time during a period beginning no later than when the student enrolls in the course or course section or takes any other action triggering the assessment of the charge, and ending no earlier than the last day to withdraw from the course without penalty;

(3) The agreement provides that the educational materials are made available to the student not later than:

(A) The first day of the semester or term, if the student enrolls in the course or course section at least seven days before the first day of the semester or term, or

(B) The seventh day after enrollment in the course or course section;

(4) The agreement does not provide for a penalty or charge added to price of materials provided under the agreement based on failing to meet a target or quota for a number or percentage of:

(A)  Students to whom the charge is assessed; or

(B)  Courses or course sections for which the charge is assessed; and

(5) The agreement prohibits the entity from engaging in, or authorizing third parties to engage in, the sale, disclosure, licensing, use, retention, or other exploitation of any data collected under the agreement, including but not limited to personally identifiable information, location data, anonymized data, and any materials derived therefrom, except as expressly authorized, in each case, in the agreement.

(k) An agreement authorized under subsection (j) is a public record under chapter 29B of this code.

(l) An institution may not deny, or enter into an agreement with another entity that would permit the entity to deny, a student access to educational materials for which the student has been, or would otherwise be, automatically charged under subsection (f) based on the student’s refusal or failure to agree to the sale, disclosure, licensing, use, retention, or other exploitation of any data pertaining to the student that would be obtained through the student’s use of the educational materials.

~~(g)~~ (m) All moneys derived from the operation of the bookstore shall be paid into a special revenue fund as provided in §12-2-2 of this code. Subject to the approval of the Governor, each governing board periodically shall change the amount of the revolving fund necessary for the proper and efficient operation of each bookstore.

~~(h)~~ (n) Moneys derived from the operation of the bookstore shall be used first to replenish the stock of goods and to pay the costs of operating and maintaining the bookstore. Notwithstanding any other provision of this section, any institution that has contracted with a private entity for bookstore operation shall deposit into an appropriate account all revenue generated by the operation and enuring to the benefit of the institution. The institution shall use the funds for nonathletic scholarships.

~~(i)~~ (o) Each governing board shall promulgate a rule in accordance with the provisions of §18B-1-6 of this code to implement the provisions of this section

~~(j)~~ (p) This section applies to textbook sales and bookstores supported by an institution’s auxiliary services and those operated by a private contractor.

(q) This section may not be construed to affect any authority granted to a faculty member by an institution to select course materials for courses taught by the faculty member.

~~(k)~~ (r) Definitions: The following words when used in this section have the meanings ascribed to them unless the context clearly indicates a different meaning:

“Digital Courseware” means a system of educational content and software designed to support the delivery of all or part of a particular course. The term does not include a learning management platform or any other software system designed to provide support for courses generally.

“Educational Materials” means textbooks and other supplementary course materials ~~that come at a cost to the student,~~ regardless of format.

“Open Education Resource Materials” has the meaning assigned in §10-1-14a of this code.

NOTE: The purpose of this bill is to the disclosure by state institutions of higher education of certain information regarding textbooks and digital courseware and certain charges assessed for those items.

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