

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

House Bill 4355

BY DELEGATES LINVILLE, ELLINGTON, KEATON, HAYNES,

KIMBLE, HANNA, MAYNARD, AND WAMSLEY

[Passed March 12, 2022; in effect ninety days from
passage.]

1 AN ACT to amend and reenact §18B-10-14 of the Code of West Virginia, 1931, as amended,
2 relating to higher education course materials and digital courseware; defining terms;
3 modifying requirements for recommendations by an educational materials affordability
4 committee to the higher education institution governing board; removing obsolete
5 language; changing the term textbook to course material; modifying information that is
6 required to be included in the listing of course materials required or assigned for any
7 course offered at an institution; requiring institution to disclose to a student enrolled at the
8 institution any charges for course materials or access to digital courseware assessed by
9 the institution or another entity to the student on the student's enrollment in a course,
10 course section, or program or in the institution for the applicable semester or term;
11 imposing requirements on institutions in instances where the required course materials or
12 digital courseware has not been selected prior to a student's enrollment or if a change to
13 the course materials or digital courseware required would cause an increased charge to
14 the student; imposing requirements on institutions in instances where certain charges are
15 assessed based on the cost of required or recommended course material or access to
16 digital courseware for a certain course or course section in which the student is enrolled;
17 imposing requirements on institutions in instances where certain charges are assessed
18 on the basis of the number of semester credit hours or the equivalent or the number of
19 courses in which the student is enrolled or on certain other basis; allowing an institution to
20 enter into an agreement between the institution and an entity under which the institution
21 assesses on the entity's behalf or allows the entity to assess a charge; allows an institution
22 to enter into an agreement between the institution and an entity under which the institution
23 assesses on the entity's behalf or allows the entity to assess a certain described charge
24 to students enrolled at the institution under certain conditions; making the agreement a
25 public record; prohibiting an institution from denying or entering into an agreement with
26 another entity that would permit the entity to deny, a student access to certain educational

27 materials on the student's refusal or failure to agree to the sale, disclosure, licensing, use,
28 retention, or other exploitation of any data pertaining to the student that would be obtained
29 through the student's use of the educational materials; and providing that section cannot
30 be construed to affect any authority granted to a faculty member by an institution to select
31 course materials for courses taught by the faculty member.

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.

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

3 (1) "Digital Courseware" means a system of educational content and software designed
4 to support the delivery of all or part of a particular course. The term does not include a learning
5 management platform or any other software system designed to provide support for courses
6 generally;

7 (2) "Course material" means a textbook, supplemental material, or open educational
8 resource; and

9 (3) "Open Education Resource Materials" has the meaning assigned in §10-1-14a of this
10 code.

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

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

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

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

24 (2) Encourage course instructors to select appropriate, high quality course educational
25 materials;

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

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

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

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

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

37 (e) An employee of a governing board:

38 (1) May not:

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

42 (B) Require for any course a course material that includes his or her own writing or work
43 if the course material incorporates either detachable worksheets or workbook-style pages

44 intended to be written on or removed from the course material. This provision does not prohibit
45 an employee from requiring as a supplement to course materials any workbook or similar material
46 which is published independently from the course material; and

47 (2) May receive:

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

50 (B) Royalties or other compensation from sales of course materials that include the
51 employee's own writing or work.

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

54 (1) The listing shall be prominently posted:

55 (A) In a central location at the institution;

56 (B) In any campus bookstore; and

57 (C) On the institution's website.

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

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

64 (4) The list shall include any associated fee or charge, such as a technology cost, library
65 use cost, or printing or publication fee.

66 (5) If the student will be charged for the course material or for access to digital courseware
67 for a course by the institution or another entity on the student's enrollment in a course, course
68 section, or program or in the institution for the applicable semester or term, the list shall include
69 the disclosures required under subsections (g)-(j) of this section.

70 (6) An institution shall post a course material to the listing when the adoption process is
71 complete and, for course materials that comes at a cost to the student, when the course
72 material is designated for order by the bookstore.

73 (g) An institution shall disclose to a student enrolled at the institution as provided by this
74 section any charges for course materials or access to digital courseware assessed by the
75 institution or another entity to the student on the student's enrollment in a course, course section,
76 or program or in the institution for the applicable semester or term, regardless of how the charge
77 is assessed on an opt-in, opt-out, or compulsory basis. This subsection does not apply to a charge
78 assessed for a purchase initiated by the student separately from the enrollment process at the
79 institution, such as the purchase of course materials at a bookstore that may be charged to the
80 student's account at the institution.

81 (h) If the required course materials or digital courseware have not been selected prior to
82 a student's enrollment in a course or course section such that the requirements of subsection (g)
83 are not met, or if a change to the course materials or digital courseware required would cause an
84 increased charge to the student, the institution shall:

85 (1) Provide individual notice to each student affected of the new or increased charges,
86 including all of the information required under subsection (g);

87 (2) Provide each student affected with the opportunity to withdraw from the course or
88 course section, or change to a different course or course section, without penalty; and

89 (3) Only assess the new or increased charge to a student if that student affirmatively opts
90 in to accepting the charge for that specific course or course section.

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

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

95 (A) The full amount of the charge;

96 (B) If the charge is for a course material in a primarily electronic format or for access to
97 digital courseware, the terms under which the publisher of the course material or digital
98 courseware collects and uses student data obtained through a student's use of the course
99 material or digital courseware; and

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

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

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

107 (1) Include the amount of the charge in the institution's tuition or fees under §18B-10-1 of
108 this code;

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

111 (A) If the charge is for course materials in a primarily electronic format or for access to
112 digital courseware, the terms under which the publisher of the course material or digital
113 courseware collects and uses student data obtained through a student's use of the course
114 material or digital courseware; and

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

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

120 (A) An open educational resource material;

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

123 (C) Other lawfully made materials available to the public at no cost and without limitation
124 to all students enrolled in the course or course section.

125 (k) An institution may enter into an agreement between the institution and an entity under
126 which the institution assesses on the entity's behalf or allows the entity to assess a charge
127 described by subsection (g) to students enrolled at the institution only if:

128 (1) The institution's educational materials affordability committee established under
129 subsection (d) determines the agreement to be consistent with the goals enumerated in
130 subsection (d);

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

132 (A) The institution's refund policy would apply with respect to the charges assessed to a
133 student if the student withdraws from the course or course section; and

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

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

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

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

143 (4) The agreement prohibits the entity from engaging in, or authorizing third parties to
144 engage in, the sale, disclosure, licensing, use, retention, or other exploitation of any data collected
145 under the agreement, including but not limited to personally identifiable information, location data,
146 anonymized data, and any materials derived therefrom, except as expressly authorized, in each
147 case, in the agreement: *Provided*, That this subsection shall not apply to the disclosure of

148 information to a government entity or scholarship entity in order to be reimbursed for the
149 distribution of course materials to a student using financial aid subsidies for course materials.

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

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

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

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

168 (p) Each governing board shall promulgate a rule in accordance with the provisions of
169 §18B-1-6 of this code to implement the provisions of this section

170 (q) This section applies to course material sales and bookstores supported by an
171 institution's auxiliary services and those operated by a private contractor.

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

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2022.

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Governor