

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]

1 A BILL to amend and reenact §18B-10-14 of the Code of West Virginia, 1931, as amended,
2 relating to the disclosure by state institutions of higher education of certain information
3 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.

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

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

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

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

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

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

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

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

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

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

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

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

33 (1) May not:

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

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

42 (2) May receive:

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

44 and

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

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

49 (1) The listing shall be prominently posted:

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

51 (B) In any campus bookstore; and

52 (C) On the institution's website.

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

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

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

62 ~~(3)~~ (5) An institution shall post a book to the listing when the adoption process is complete
63 and, for a textbook that comes at a cost to the student, when the textbook is designated for order
64 by the bookstore.

65 (f) An institution shall disclose to a student enrolled at the institution as provided by this
66 section an automatic charge for textbooks or access to digital courseware assessed by the
67 institution or another entity to the student on the student's enrollment in a course, course section,
68 or program or in the institution for the applicable semester or term, regardless of whether the
69 charge is assessed on an opt-in, opt-out, or compulsory basis. This subsection does not apply to
70 a charge assessed for a purchase initiated by the student separately from the enrollment process

71 at the institution, such as the purchase of a textbook at a bookstore that may be charged to the
72 student's account at the institution.

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

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

77 (A) The full amount of the charge;

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

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

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

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

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

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

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

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

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

100 (A) An open educational resource material;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

145 (l) An institution may not deny, or enter into an agreement with another entity that would
146 permit the entity to deny, a student access to educational materials for which the student has

147 been, or would otherwise be, automatically charged under subsection (f) based on the student's
148 refusal or failure to agree to the sale, disclosure, licensing, use, retention, or other exploitation of
149 any data pertaining to the student that would be obtained through the student's use of the
150 educational materials.

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

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

161 ~~(i)~~ (o) Each governing board shall promulgate a rule in accordance with the provisions of
162 §18B-1-6 of this code to implement the provisions of this section

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

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

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

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

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

175 “Open Education Resource Materials” has the meaning assigned in §10-1-14a of this
176 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.