

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Originating

House Bill 3555

By Delegates Statler, Toney, Foggin, Hornby, Lucas,

Mazzocchi, Pritt and Willis

[Originating in the Committee on Education; Reported

on February 20, 2023]

1 A BILL to amend and reenact §18B-10-14 of the Code of West Virginia, 1931, as amended,
2 relating to clarifying the requirements imposed on institutions in instances where the
3 required course materials or digital courseware has not been selected prior to a student's
4 enrollment or if a change to the course materials or digital courseware required would
5 cause an increased charge to the student.

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 to
4 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. Institutions may work with booksellers,
14 publishers, or other third parties to offer a courseware and book fee at a lump sum or per credit
15 hour amount, provided that an opt out option is offered to students in advance of the start of each
16 academic term.

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

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

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

27 (2) Encourage course instructors to select appropriate, high quality course educational
28 materials;

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

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

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

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

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

40 (e) An employee of a governing board:

41 (1) May not:

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

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

50 (2) May receive:

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

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

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

57 (1) The listing shall be prominently posted:

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

59 (B) In any campus bookstore; and

60 (C) On the institution's website.

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

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

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

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

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

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

84 (h) If the required course materials or digital courseware have not been selected prior to a
85 student's enrollment in a course or course section such that the requirements of subsection (g) are
86 not met, ~~and or if a change to the course materials or digital courseware required~~ that selection
87 would cause an increased charge to the student, the institution shall no later than 30 days prior to
88 the start of the course or course section:

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

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

93 (3) Only assess the new or increased charge to a student if ~~that student~~ the institution has
94 a policy under which the student may opt out of the way the institution provides for the student to
95 obtain or purchase the course materials affirmatively opts in to accepting the charge and receive a
96 full refund for any charges already incurred for course materials for that specific course or course
97 section.

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

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

102 (A) The full amount of the charge;

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

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

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

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

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

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

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

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

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

126 (A) An open educational resource material;

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

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

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

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

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

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

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

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

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

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

149 (4) The agreement prohibits the entity from engaging in, or authorizing third parties to
150 engage in, the sale, disclosure, licensing, use, retention, or other exploitation of any data
151 collected under the agreement, including but not limited to personally identifiable information,
152 location data, anonymized data, and any materials derived therefrom, except as permitted by
153 the Family Education Rights and Privacy Act (20 U.S.C. § 1232g and 34 CFR Part 99) or other
154 applicable law. Provided, that this subsection shall not apply to:

155 (A) the disclosure of information to a government entity or scholarship entity in order to
156 be reimbursed for the distribution of course materials to a student using financial aid subsidies
157 for course materials;

158 (B) the use of student data for research and development of course materials or the
159 entity's educational sites, services, or applications, and to demonstrate the effectiveness of the
160 entity's services;

161 (C) the use of de-identified student data for adaptive learning purposes and customized
162 student learning;

163 (D) disclosures made to a service provider, provided the entity

164 (i) prohibits the service provider from using any student data for any purpose other than
165 providing the contracted service to, or on behalf of, the entity,

166 (ii) prohibits the service provider from disclosing any student data provided by the entity
167 with subsequent third parties without explicit permission from the entity, and

168 (iii) requires the service provider to implement and maintain reasonable security
169 procedures and practices to protect the student data;

170 (E) use, disclosure, or retention of student data to ensure legal and regulatory
171 compliance or to respond or to or participate in judicial process;

172 (F) use, disclosure, or retention of student data to protect the safety of users or others or
173 security of entity's sites, services, or applications; and

174 (G) when the student or guardian, as applicable, has granted prior written consent for the
175 sale, disclosure, licensing, use, or retention of student data.

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

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

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

188 (p) Each governing board shall promulgate a rule in accordance with the provisions of
189 §18B-1-6 of this code to implement the provisions of this section

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

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

NOTE: The purpose of this bill is to prohibit an institution from assessing a new or increased charge for required course materials to a student unless the institution allows the student to

opt of the way the institution permits for the student to obtain the course materials and receive a refund for course materials already purchased.

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