THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL
No. 929 Session of 2009

INTRODUCED BY DINNIMAN, PICCOLA AND WILLIAMS, JUNE 5, 2009

AS AMENDED ON SECOND CONSIDERATION, JUNE 21, 2010

AN ACT

Providing for the sale of certain course materials at institutions of higher education, for responsibilities of faculty and institutions of higher education and for college textbook rental pilot programs; and establishing the College Textbook Policies Advisory Committee.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the College Textbook Affordability, Accountability and Accessibility Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Advisory committee." The College Textbook Policies Advisory Committee established under this act.

"Bundle." One or more college textbooks or other supplemental materials that may be packaged together to be sold as course materials for one price.

"Campus." The grounds and buildings of an institution of
higher education that are designated as such by the institution of higher education.

"Campus bookstore." The bookstore on the campus of, or otherwise associated with, an institution of higher education.

"College textbook." A textbook or set of textbooks used for, or in conjunction with, a course in postsecondary education at an institution of higher education.

"Custom textbook." A college textbook that is compiled by a publisher at the direction of a faculty member or other person or adopting entity in charge of selecting course materials at an institution of higher education and may include, alone or in combination, items, such as selections from original instructor materials, previously copyrighted publisher materials or copyrighted third-party works. This term does not include purely aesthetic changes to a textbook when compared with a prior edition, such as a commemorative edition.

"Institution of higher education" or "institution." Any of the 14 State-owned universities that are part of the Pennsylvania State System of Higher Education, including the four State-related universities. The term also includes community colleges that are members of the Pennsylvania Commission for Community Colleges and independent or private colleges or universities that receive an assistance grant under the act of July 18, 1974 (P.L.483, No.174), known as The Institutional Assistance Grants Act.

"INTEGRATED TEXTBOOK." A COLLEGE TEXTBOOK THAT IS:

(1) COMBINED WITH SUPPLEMENTAL MATERIALS DEVELOPED BY A THIRD PARTY AND THAT, BY THIRD-PARTY CONTRACTUAL AGREEMENT, MAY NOT BE OFFERED BY PUBLISHERS SEPARATELY FROM THE COLLEGE TEXTBOOK WITH WHICH THE SUPPLEMENTAL MATERIALS ARE COMBINED;
(2) COMBINED WITH SUPPLEMENTAL MATERIALS THAT ARE SO
INTERRELATED WITH THE CONTENT OF THE TEXTBOOK THAT THE
SEPARATION OF THE TEXTBOOK FROM THE SUPPLEMENTAL MATERIALS
WOULD RENDER THE TEXTBOOK UNUSABLE FOR ITS INTENDED PURPOSE.

"ISBN." International Standard Book Number.

"Publisher." An entity that publishes college textbooks or
supplemental materials and markets college textbooks or
supplemental materials to faculty members at institutions of
higher education. The term does not include a wholesaler.

"Substantial content." Parts of a college textbook, such as
new chapters, additional eras of time, new themes or new subject
matter.

"Supplemental material." Educational material developed to
accompany a college textbook, which may include printed
materials, computer disks, Internet website access and
electronically distributed materials.

Section 3. Publisher requirements.

(a) Pricing information disclosure.--When a publisher
provides a faculty member or entity in charge of selecting
course materials at an institution of higher education with
information regarding a college textbook or supplemental
material, the publisher shall include, in writing or
electronically, the following:

(1) The price at which the publisher would make the
college textbook or supplemental material available to the
campus bookstore of the institution of higher education.

(2) The copyright dates of the three previous editions
of the college textbook or supplemental material in the
preceding ten years, if any.
(3) The substantial content revisions made between the current edition of the college textbook or supplemental material and the previous edition, if any.

(4) Whether the college textbook or supplemental material is available in any other format, including paperback and unbound, and the price at which the publisher would make the college textbook or supplemental material in the other format available to the campus bookstore of such institution of higher education.

(b) Unbundling of college textbooks from supplemental materials.--

(1) A publisher that sells a college textbook and any supplemental material accompanying the college textbook as a bundle OR AS AN INTEGRATED TEXTBOOK shall also make available the college textbook and each supplemental material as separate and unbundled items, each separately priced.

(2) A publisher is not required to make available supplemental items developed by a third party and that, by third-party contractual agreement, may not be offered by the publisher separately from the college textbook.

(c) Custom textbooks.--When a faculty member or entity in charge of selecting course materials at an institution of higher education directs a publisher to compile a custom textbook, the publisher shall provide, in writing or electronically, prior to accepting an order for the custom textbook, the price at which the publishers would make the custom textbook available to the campus bookstore.

Section 4. Faculty responsibilities.

(a) General duties.--A faculty member or entity in charge of selecting college textbooks, supplemental materials or bundled
textbook packages for an institution of higher education shall:

(1) Consider the least costly practices in assigning college textbooks, consistent with educationally sound practices as determined by the appropriate faculty or entity.

(2) Consider the use of college textbooks, supplemental materials and bundled textbook packages for a longer period of time, to the extent they are not outdated.

(3) Work with bookstores to review timeliness and the processes involved in ordering and stocking selected course materials, disclose college textbook costs to students and actively promote and publicize book buyback programs.

(4) Provide a statement to the entity designated by the president or chancellor of the institution to disseminate the information required under section 5(a) detailing college textbooks or supplemental learning materials, whether bundled or unbundled, that are required or recommended for the course. Where possible, the statement shall indicate if an earlier edition may be effective for use by a student.

(5) Encourage participation in college textbook rental programs that exist or may exist in the future.

(b) Prohibited conduct by faculty and academic departments.--

(1) No faculty member or academic department may demand or receive any payment, loan, subscription, advance, deposit of money, services or any thing, present or promised, as an inducement for requiring students to purchase a specific college textbook required for coursework or instruction.

(2) Notwithstanding the provisions of paragraph (1), a faculty member or academic department may receive:

(i) Sample copies, instructor's copies or
(ii) Royalties or other compensation from the sale of college textbooks that include the writing or work of the particular faculty member or academic department.

(3) A violation of this subsection may result in the institution taking disciplinary action, subject to any contractual requirements, against the faculty member or academic department, including, where appropriate, referral to law enforcement.

(c) Construction.--Nothing in this section shall be construed:

(1) To prohibit a faculty member or academic department from requiring the most recent edition of a college textbook.

(2) To supersede the institutional autonomy or academic freedom of instructors, faculty members or academic departments involved in the selection of college textbooks, supplemental materials and other classroom materials.

Section 5. Responsibilities of institutions of higher education.

(a) General rule.--Except as otherwise provided in this section, each institution shall make available at student registration and throughout the year on its Internet website and upon written request a listing of all college textbooks and supplemental materials, including the ISBN, required and recommended for courses to be offered during the upcoming term, provided that:

(1) If the ISBN is not available, the institution shall include the author, title, edition, publisher and copyright date for the college textbook or supplemental material.

(2) If the institution determines that the disclosure of
the information relating to a college textbook or supplemental material is not practicable, then the institution shall so indicate by placing the designation "To Be Determined" in lieu of the information required in paragraph (1). As this information becomes available, it shall be posted on the institution's Internet website and provided as soon as possible to students and those who have previously requested such information.

(b) Publication.--The institution shall provide the information required under subsections (a) and (d) to existing and accepted incoming students by posting the information on the institution's Internet website used for course scheduling, preregistration and registration. The institution shall inform, in writing, students and all others who make a written request for such information of the availability of the information. The posting of this information on the Internet website of the campus bookstore shall satisfy the provisions of this section provided that such information is freely available to students and the general public.

(c) Information to bookstore.--An institution of higher education shall make available to a bookstore that is operated by, or in a contractual relationship or otherwise affiliated with, the institution, and shall also make available to off-campus bookstores upon request, as soon as practicable after the request of the bookstore, the most accurate information available relating to:

1. The institution's course schedule for the subsequent academic period.

2. For each course or class offered by the institution for the subsequent academic period:
(i) The information required by subsection (a) for each college textbook or supplemental material required or recommended for the course or class.

(ii) The number of students enrolled in such course or class.

(iii) The maximum student enrollment for such course or class.

(d) Dissemination of other information to students.--An institution of higher education is encouraged to disseminate to students information relating to:

(1) Available programs for renting college textbooks or for purchasing used college textbooks.

(2) Available college textbook buyback programs.

(3) Available alternative content delivery programs, including digital textbooks.

(4) Other available cost-saving strategies for acquiring college textbooks and supplemental materials.

(5) Campus and off-campus bookstore information, to the extent available, including location, hours and Internet website information.

(e) Textbook information.--Nothing in this section shall be construed to prohibit or restrict the ability of a bookstore from also providing textbook information to students.

Section 6. College textbook rental program.

(a) General rule.--An institution of higher education may, with the approval of the administration, authorize the establishment of a college textbook rental program for the students of any campus. Programs may receive and use Federal, State and private funding to aid in the establishment of such programs.
(b) Task force.--The administrators of a campus with a college textbook rental program may convene a task force to determine recommended policies and procedures to establish and operate a college textbook rental pilot program. The task force must include students, faculty, administrators and bookstore managers.

(c) Textbook selection.--The program may not limit the rights of faculty to select appropriate textbooks in accordance with established policies and procedures.

(d) Powers of campuses with college textbook rental programs.--The administrators of a campus with a college textbook rental program may:

(1) Establish policies for the program, including, but not limited to, implementing practices to achieve the best possible purchase price for college textbooks and for the provision of rental services. Such policies shall be developed with the input of faculty, students and bookstores.

(2) Institute other procedures necessary to establish and operate the program in accordance with the provisions of this act.

(3) Charge students a fine for any late, lost or damaged books, as determined by the program, provided that students may not be charged a fine for normal textbook wear and tear.

(4) Students shall not be required to participate in a textbook rental program.

(e) Construction.--Nothing in this section shall be construed to:

(1) change or limit any textbook rental program or program in existence at an institution of higher education.
prior to the enactment date of this act; or
(2) restrict an institution of higher education from establishing or piloting other textbook rental models or programs as deemed appropriate by the institution of higher education.

Section 7. Electronic versions of college textbooks.
(a) General rule.--No later than January 1, 2020, an individual, firm, partnership or corporation that publishes college textbooks offered for sale at institutions of higher education shall, to the extent practicable, make the college textbooks available, in whole or in part, for sale in an electronic format when commercially reasonable.
(b) Construction.--Nothing in this section shall be construed to authorize any use of instructional materials that would constitute an infringement of copyright under Federal law.
(c) Definition.--For purposes of this section, "college textbook" means a book, not including a novel, that contains printed material and is intended for use as a source of study material for a class or group of students, a copy of which is expected to be available for the use of each of the students in that class or group.

Section 8. College textbook adoption policies.
(a) General rule.--An institution of higher education may implement policies, procedures and guidelines that promote efforts to minimize the cost of college textbooks for students at the institution while maintaining the quality of education and academic freedom. The policies, procedures and guidelines shall ensure that:
(1) The adoption of a college textbook by a faculty member is made with sufficient lead time so as to confirm
availability of the requested materials and, where possible, ensure maximum availability of used college textbooks.

(2) (i) During the college textbook adoption process, the intent to use all items ordered, particularly each individual item sold as part of a bundled package, is affirmatively confirmed before the adoption is finalized by the faculty member.

(ii) If the faculty member does not intend to use each item in a bundled package, the faculty member shall notify the bookstore, and the bookstore shall order the individualized items if:

(A) Procurement of the individualized items is cost effective for both the institution and the students.

(B) The individualized items are made available by the publisher.

(3) Faculty members affirmatively acknowledge the quoted retail price to the bookstore of any college textbook selected for use in each course.

(4) Faculty members shall give due consideration to both the educational value and cost of new edition college textbooks and any supplemental materials when previous editions do not significantly differ in a substantive way, as determined by the appropriate faculty member.

(5) Required or assigned college textbooks are made available to students who are otherwise unable to afford the cost.

(6) Decisions regarding textbook adoption are made in a timely manner to ensure a bookstore's ability to have textbooks available for the first day of class.

(a) Establishment.--A standing committee of the State Board of Education to be known as the College Textbook Policies Advisory Committee is established. The Department of Education shall provide staff support for the advisory committee.

(b) Membership.--The advisory committee shall be comprised of:

(1) The Deputy Secretary for Higher Education of the Department of Education or a designee.

(2) The chairman of the State Board of Education Higher Education Council or a designee.

(3) One faculty member representing the State System of Higher Education as recommended by the Chancellor of the State System of Higher Education.

(4) One faculty member representing each of the State-related institutions as recommended by the chancellors of the State-related institutions.

(5) One faculty member representing community colleges as recommended by the Commission for Community Colleges.

(6) One faculty member representing private and independent colleges and universities as recommended by the Association of Independent Colleges and Universities of Pennsylvania.

(7) The chairman and minority chairman of the Education Committee of the Senate and the chairman and minority chairman of the House of Representatives or their designees.

(8) Nine members appointed by the chairman of the State Board of Education as follows:

(i) Three members representing college bookstores, with one representing campus bookstores, one representing
off-campus bookstores and one representing online bookstores that focus primarily on the sale of college textbooks.

(ii) Two members representing textbook publishers.

(iii) Four student members representing college students, of whom one must attend a State System of Higher Education institution, one must attend a State-related institution, one must attend a community college and one must attend an independent or private college or university within this Commonwealth. The student members shall be appointed, respectively, by the chairman from a list of students recommended by the Chancellor of the State System of Higher Education, the chancellors of the State-related institutions, the Commission for Community Colleges or the Association of Independent Colleges and Universities of Pennsylvania.

(9) One member possessing a background in information technology-electronic media appointed by the chairman of the State Board of Education.

(c) Recommendations.--The advisory committee shall examine national and international efforts relating to college textbook affordability and accessibility and make recommendations that:

(1) Ensure that students have access to affordable course materials by decreasing costs to students and enhancing transparency and disclosure with respect to the selection, purchase, sale and use of course materials.

(2) Identify ways to decrease the cost of college textbooks and supplemental materials for students while supporting the academic freedom of faculty members to select high quality course materials for students.
(3) Encourage college textbook publishers and
distributors to work with faculty to promote understanding of
the cost to students of purchasing faculty-selected college
textbooks, including the disclosure of prices and bundling
practices.

(4) Encourage innovation in the development and use of
course materials, including open-source college textbooks and
other open-source educational resources, that can help
students receive the full value of their educational
investment without excessive cost.

(5) Ensure that faculty members are informed of accurate
and relevant pricing information for course materials and
that students are protected as a consumer group.

(6) Make recommendations to the General Assembly and the
State Board of Education to strengthen existing State laws
and regulations and to propose any additional and necessary
State laws and regulations.

(d) First meeting.--The advisory committee shall hold its
first meeting within 60 days of the effective date of this
section. The advisory committee shall meet at least once
quarterly. Members of the advisory committee shall serve without
compensation. The deputy secretary for Higher Education of the
Department of Education shall serve as committee chair.

(e) Report.--No later than 18 months after the effective
date of this section, the advisory committee shall make a report
to the State Board of Education that outlines its findings and
recommendations. The report shall also be delivered to the
Governor's Office, members of the Education Committee of the
Senate and members of the Education Committee of the House of
Representatives. The report shall be updated every three years
and may also be posted on the Department of Education's Internet
website.

Section 10. Effective date.

This act shall take effect July 1, 2010, or immediately,
whichever is later.