

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4445**

BY DELEGATES HANSHAW, ESPINOSA, PERRY, MOYE,  
AMBLER, COOPER, EVANS, D., WESTFALL AND ELLINGTON

[Introduced February 8, 2016; Referred  
to the Committee on Education.]

1 A BILL to repeal §18-2A-9 of the Code of West Virginia, 1931, as amended; and to amend and  
 2 reenact §18-2A-1, §18-2A-2, §18-2A-3, §18-2A-4, §18-2A-5, §18-2A-6, §18-2A-7 and  
 3 §18-2A-8 of said code, all relating to the selection and purchase of instructional  
 4 educational resources; defining instructional resources; requiring publishers to file  
 5 statement of instructional resources with State Board of Education; prohibiting publishers  
 6 from violating article and providing monetary penalty for violating article; permitting  
 7 supplemental instructional resources to be used in public schools; requiring State Board  
 8 of Education to establish a policy setting criteria required for instructional resources;  
 9 allowing county boards of education to adopt instructional resources for use in schools,  
 10 requiring county boards of education to adopt a policy regarding instructional resource  
 11 adoption; prohibiting board of education employees from acting as sales agents for  
 12 publishers of instructional resources and providing penalty for violation.

*Be it enacted by the Legislature of West Virginia:*

1 That §18-2A-9 of the Code of West Virginia be repealed; and that §18-2A-1, §18-2A-2,  
 2 §18-2A-3, §18-2A-4, §18-2A-5, §18-2A-6, §18-2A-7 and §18-2A-8 be amended and reenacted,  
 3 all to read as follows:

## **ARTICLE 2A. ADOPTION OF INSTRUCTIONAL RESOURCES.**

### **§18-2A-1. Definitions.**

1 As used in this article, "instructional resources" means print materials, electronic resources  
 2 and systems, or combinations of such instructional resources which convey information to a  
 3 student and are adopted by a county board of education.

### **§18-2A-2. Adoption and purchase of instructional materials; filing of price statement.**

1 (a) Any publisher of textbooks or electronic textbooks in the United States desiring to offer  
 2 such textbooks or electronic textbooks for use by pupils in the public schools of West Virginia,  
 3 before such textbooks or electronic textbooks may be adopted and purchased by any school  
 4 board must, on or before January 1 of each year, file in the office of the State Superintendent of

5 Schools, a statement that the list wholesale price to school districts in West Virginia will be no  
6 more than the lowest list wholesale price available to school districts in any other state. No  
7 publisher of a textbook shall file a statement under this section unless the publisher complies with  
8 all of the following:

9 (1) At the same time as filing the statement, the publisher shall also file:

10 (A) For textbooks published before August 18, 2006, the wholesale price of an electronic  
11 file that contains the text of the textbook in rich text format, or another electronic format approved  
12 by the superintendent of public instruction, for translating the text of the textbook into braille;

13 (B) For textbooks published on or after August 18, 2006, the wholesale price of an  
14 electronic file that contains the text of the textbook, and of all instructional materials the publisher  
15 offers with the textbook, in the national instructional materials accessibility standard (NIMAS) code  
16 for translating the text of the entire textbook into NIMAS-approved formats, including braille, audio,  
17 digital text, or large print.

18 (2) The list wholesale price filed for any specified number of electronic files described in  
19 subdivisions (1)(A) and (B) of this section for the textbook and instructional materials the publisher  
20 offers with the textbook does not exceed the list wholesale price for the same number of the  
21 printed version of the textbook and materials.

**§18-2A-3. Violation of contract by publisher.**

1 (a) If a publisher who files a statement under section one of this article, fails or refuses to  
2 furnish such instructional resources adopted as provided in sections one through ten of this article  
3 to any board of education upon the terms provided in such sections, such board at once must  
4 notify the State Board of Education of the failure or refusal, and the State Board of Education at  
5 once shall cause an investigation of the charge to be made. If it is found to be true, the State  
6 Board of Education at once shall notify the publisher and each board in the state that the  
7 instructional resources shall not thereafter be adopted and purchased by boards of education.

8 (b) Any publisher that files a statement under section one of this article and fails or refuses

9 to furnish the instructional resources as described in subsection (a) of this section shall pay a fine  
10 of \$500 for each failure, which shall be collected by the State Superintendent of Schools, or his  
11 or her designee.

**§18-2A-4. Compliance by publisher.**

1 No county board of education may adopt or cause to be used in the public schools any  
2 instructional resource whose publisher has not complied with this article.

**§18-2A-5. Purchase of supplementary instructional resources.**

1 This article does not apply to the purchase of supplementary instructional resources,  
2 including, but not limited to, reading books, library books, reference books, or any other books,  
3 except instructional resources required and adopted by the county board of education. All books,  
4 except textbooks and electronic textbooks required by the board, shall be ordered, received,  
5 examined, and paid for in the same manner and by the same persons as other supplies and  
6 equipment.

**§18-2A-6. Instructional resources for students.**

1 (a) Each county board of education shall furnish, free of charge, the necessary  
2 instructional resources to the students attending the public schools in that county.

3 (b) A district board that chooses to furnish electronic textbooks to pupils attending school  
4 in the district shall provide reasonable access to the electronic textbooks and other necessary  
5 computer equipment to pupils in the district who are required to complete homework assignments,  
6 and teachers providing homework assignments, utilizing electronic textbooks furnished by the  
7 district board.

8 (c) All instructional resources furnished as provided in this section shall be the property of  
9 the district, and loaned to the pupils on such terms as each such board prescribes.

**§18-2A-7. Selection of textbooks by board; adoption for period of five years.**

1 (a) Instructional resources adopted by a county board of education shall substantially  
2 cover the required content and skills for the subject as approved by the state board. The state

3 board shall establish a policy setting forth the criteria required to be included in instructional  
4 resources adopted by county boards.

5 (b) Every county board of education shall adopt a policy regarding the adoption of  
6 instructional resources which shall include, at a minimum, the process for reviewing instructional  
7 resources, the make-up of instructional resources, duties and responsibilities of the county's  
8 instructional resource review committee, and a process for reviewing instructional resources that  
9 are adopted.

10 (c) At any regular meeting, the county board of education shall determine by a majority  
11 vote of all members elected which instructional resources shall be required in the schools under  
12 its control.

**§18-2A-8. Board of education employees prohibited from acting as sales agent for instructional resources.**

1 No board of education employee employed shall act as sales agent, either directly or  
2 indirectly, for any person, firm, or corporation that files instructional resources with the State  
3 Superintendent of Schools, or that sells school apparatus or equipment of any kind for use in the  
4 public schools. A violation of this section shall result in a forfeiture of the license of the employee  
5 to teach in the public schools.

NOTE: The purpose of this bill is to update the provisions of the code addressing the adoption of instructional resources. In furtherance of this objective the bill includes the following provisions; (1) Defining "instructional resources"; (2) requiring publishers of electronic text books to file certain statements with the State Superintendent of Schools concerning wholesale pricing; (3) providing certain procedures to be taken if a publisher breaches a contract in relation to the provision of instructional resources; (4) prohibiting any county board of education to use instructional resources furnished by a publisher who has not complied with the requirements of the article; (5) providing that supplementary instructional resources do not apply to the provisions of the article; (6) requiring county boards of education to furnish free of charge necessary instructional resources; and (7) prohibiting employees of boards of education to act as sales agents for any provider of instructional resources. The bill also repeals section 9 of the article which addresses persons who provide gifts and bribes in order to influence adoption of instructional resources, which, under current law constitutes a felony.

This article has been completely rewritten, and therefore is completely underscored.

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