

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

House Bill 4077

BY DELEGATES HIGGINBOTHAM AND ELLINGTON

(BY REQUEST OF THE HIGHER EDUCATION POLICY COMMISSION)

[Introduced January 09, 2020; Referred to the
Committee on Education.]

1 A BILL to amend and reenact §18B-2B-9 of the Code of West Virginia, 1931, as amended, relating
2 to increasing the amount of the bond required to be posted by proprietary schools;
3 establishing methods of bonding; and requiring suspension of a proprietary school's permit
4 if there is not required bond coverage.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL
COLLEGE EDUCATION.**

**§18B-2B-9. Permits required for correspondence, business, occupational and trade
schools; surety bonds ~~and amount and method of bonding~~; fees; issuance, renewal
and revocation of permit; reports; rules; penalty and enforcement.**

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

3 (1) "Proprietary schools that award specialized associate degrees" means institutions of
4 higher education; and

5 (2) "Specialized associate degrees" means degrees awarded by such institutions pursuant
6 to a program of not fewer than two academic years.

7 (b) Nothing in this section qualifies proprietary schools for additional state moneys not
8 otherwise qualified under other provisions of this code.

9 (c) It is unlawful for any person representing a correspondence, business, occupational or
10 trade school inside or outside this state, as these are defined by the council by rule promulgated
11 in accordance with §29A-3A-1 *et seq.* of this code, to solicit, sell or offer to sell courses of
12 instruction to any resident of this state for consideration or remuneration unless the school first
13 applies for a permit, or obtains a permit, from the council in the manner and on the terms herein
14 prescribed, except this section does not apply to private organizations which offer only tax return
15 preparation courses. The rule previously promulgated by the state College System Board of

16 Directors and transferred to the council by §18B-2B-6 of this code remains in effect until rescinded
17 or amended by the council.

18 (1) All private training or educational institutions, schools or academies or other
19 organizations shall apply for a permit from the council on forms provided by the council.

20 (2) Each initial application shall be accompanied by a nonrefundable fee of \$2,000. The
21 council also may assess an additional fee based on any additional expense required to evaluate
22 the application.

23 (3) The council shall make a determination on the initial permit application within 90 days
24 after receipt of the application and fee.

25 (4) An applicant for an initial permit shall show proof at the time of filing an application that
26 adequate facilities are available and ready for occupancy and that all instructional equipment,
27 books and supplies and personnel are in place and ready for operation. A representative of the
28 council shall make an on-site visit to the facilities of all new applicants to confirm their readiness
29 for operation prior to issuance of the initial permit if the facilities are located in West Virginia.

30 (5) A school is considered to be established under the provisions of this article on the date
31 it first begins to operate lawfully. An established school is not required to reapply for a permit as
32 a result of changes in governance; administration; ownership; or form of operation.

33 (6) After the first permit year, an annual fee of \$500 is imposed on each school for each
34 campus it operates in this state.

35 (d) Each application for a proprietary school that has its physical facilities in this state shall
36 be accompanied by a surety bond in the penal sum of \$35,000 for any school which has its
37 physical facilities located in this state and which has operated in this state for at least 10 years
38 penal bond, on a form to be prescribed and furnished by the council, payable to the State of West
39 Virginia and conditioned upon the school faithfully performing all of the requirements of this
40 section, the rules promulgated hereunder, and the permit. The penal amount of the bond, as
41 determined by the council, may not be less than \$50,000 nor more than \$100,000.

42 (1) If the school has changed ownership within the last 10 years by transfer of ownership
43 control to a person who is a spouse, parent, sibling, child or grandchild of the previous owner, the
44 surety bond shall continue in the penal sum of ~~\$35,000~~ as determined by the council. The period
45 of liability for bond coverage begins with the issuance of the permit and continues for the full term
46 of the permit, plus any renewals thereof. The council shall release the bond upon satisfaction
47 that the conditions thereof have been fully performed. Upon release of the bond, any cash or
48 collateral securities deposited by the school shall be returned to the school that deposited the
49 same.

50 (2) Any school which has operated in West Virginia for fewer than 10 years, excluding
51 those schools which have changed ownership within the last 10 years as provided in subdivision
52 (1) of this section, and any school located in another state which applies for a permit hereunder,
53 shall provide a surety bond of ~~\$50,000~~ as determined by the council. The form of the bond shall
54 be approved by the Chancellor and may include, at the option of the school, surety bonding,
55 collateral bonding (including cash and securities), establishment of an escrow account,
56 submission of a letter of credit or a combination of these methods. If collateral bonding is used,
57 the school may elect to deposit cash or collateral securities or certificates as follows: bonds of the
58 United States or its possessions; full faith and credit general obligations bonds of the State of
59 West Virginia or other states and of any county, district or municipality of the State of West Virginia
60 or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor
61 of the council. The cash deposit or market value of the securities or certificates shall be equal to
62 or greater than the penal sum of the bond. The Chancellor shall, upon receipt of any deposit of
63 cash, securities or certificates, promptly place the same with the Treasurer of the State of West
64 Virginia, whose duty it is to receive and hold the deposit in the name of the state in trust for the
65 purpose for which the deposit is made when the permit is issued. The school making the deposit
66 is entitled, from time to time, to receive from the State Treasurer, upon the written approval of the
67 Chancellor, the whole or any portion of any cash, securities or certificates so deposited, upon

68 depositing with him or her in lieu thereof cash or other securities or certificates of the classes
69 specified in this subsection having value equal to or greater than the sum of the bond.

70 (3) Any school may be required to increase its bond to \$150,000 if either of the following
71 conditions apply:

72 (A) The school's accreditation is terminated for cause; or

73 (B) The school's institutional eligibility under the Higher Education Act of 1965, as
74 amended, has been terminated for cause. Expiration, nonrenewal or voluntary relinquishment of
75 accreditation or institutional eligibility under the Higher Education Act, or failure to meet the
76 requirements of one or more programs under the Act, are not considered to be a termination for
77 cause.

78 (4) Any school may be required to increase its bond to an amount not to exceed \$400,000
79 if, in accordance with the standards of the American Institute of Certified Public Accountants, the
80 school's audited financial statements are qualified because the school's continued financial
81 viability as an ongoing concern is in doubt and the council determines an increased bond is
82 reasonably necessary to protect the financial obligations legally due the students then enrolled at
83 the institution.

84 (A) A school may be required to maintain the increased bonding requirements described
85 above until all students attending classes at the date of termination either graduate or withdraw.

86 (B) The bond may be continuous and shall be conditioned to provide indemnification to
87 any student suffering loss as a result of any fraud or misrepresentation used in procuring the
88 student's enrollment, failure of the school to meet contractual obligations, or failure of the school
89 to meet the requirements of this section.

90 (C) The bond shall be given by the school itself as a blanket bond covering all of its
91 representatives.

92 ~~(D)~~ (5) The surety on a bond or other collateral may ~~cancel the same~~ be released upon
93 giving 30 days' notice in writing to the principal on the bond and to the ~~state~~ council and thereafter

94 shall be relieved of liability for any breach of condition occurring after the effective date of the
95 ~~cancellation~~ release. Upon 10 days' written notice, the council shall suspend the permit when the
96 proprietary school is no longer covered by a surety bond or other collateral as required by this
97 section, and the suspension shall remain in effect until the school obtains another bond or
98 establishes other collateral and posts it in the same manner and like amount as required for the
99 initial bond.

100 (e) A permit ~~shall be~~ is valid for one year corresponding to the effective date of the bond
101 and may be renewed upon application, accompanied by the required fee and the surety bond as
102 herein required. All fees collected for the issuance or renewal of a permit shall be deposited in
103 the State Treasury to the credit of the council.

104 (f) The council may refuse a permit to any school if the council finds that the school
105 engages in practices which are inconsistent with this section or with rules issued pursuant thereto.

106 (g) A permit issued hereunder may be suspended or revoked by the council for fraud or
107 misrepresentation in soliciting or enrolling students, for failure of the school to fulfill its contract
108 with one or more students who are residents of West Virginia or for violation of or failure to comply
109 with any provision of this section or with any regulation of the council pertinent thereto.

110 (1) Before taking any action to suspend or revoke a school's permit, the council shall give
111 the school 15 days' notice and convene a hearing, if a hearing is requested by the school.

112 (2) Prior to the council taking any adverse action, including refusal, suspension or
113 revocation of a permit, the council shall give the school reasonable opportunity to take corrective
114 measures.

115 (3) Any refusal, suspension or revocation of a permit, or any other adverse action against
116 a school, shall comply with all constitutional provisions, including due process, relating to the
117 protection of property rights.

118 (h) All correspondence, business, occupational or trade schools which have been issued
119 a permit shall make annual reports to the council on forms furnished by the council and shall

120 provide such appropriate information as the council reasonably may require. All correspondence,
121 business, occupational or trade schools which have been issued a permit shall furnish to the
122 council a list of its official representatives. Each school shall be issued a certificate of identification
123 by the council for each of its official representatives.

124 (i) The issuance of a permit pursuant to this section does not constitute approval or
125 accreditation of any course or school. No school, nor any representative of a school, may make
126 any representation stating, asserting or implying that a permit issued pursuant to this section
127 constitutes approval or accreditation by the State of West Virginia, council or any other
128 department or agency of the state.

129 (j) The council ~~is hereby authorized to~~ may adopt rules and conduct on-site reviews to
130 evaluate academic standards maintained by schools for the awarding of certificates, diplomas,
131 associate degrees and specialized associate degrees.

132 (1) These standards may include curriculum, personnel, facilities, materials and
133 equipment.

134 (2) For accredited correspondence, business, occupational and trade schools under
135 permit on July 1, 1979, which have their physical facilities located in this state and which are
136 accredited by the appropriate nationally recognized accrediting agency or association approved
137 by the United States Department of Education, the accrediting agency's standards, procedures
138 and criteria are accepted as meeting applicable laws, standards and rules of the council.

139 (3) Institutions which are institutionally accredited by accrediting agencies recognized by
140 the United States Department of Education to establish academic standards for post-secondary
141 education may offer post-secondary educational programs leading to certificates, diplomas and
142 associate degrees and may award certificates, diplomas and associate degrees to graduates who
143 successfully complete required programs in accordance with the academic standards required by
144 such accrediting agency.

145 (4) If a review undertaken by the council indicates there may be deficiencies in the
146 academic standards the institution maintains in its educational programs and if such deficiencies
147 are of such a material nature that they jeopardize continued accreditation, the council shall notify
148 the institution. If the council and the institution are unable to agree on the deficiencies or the steps
149 necessary to correct the deficiencies, the council shall consult with the institution's accrediting
150 agency regarding an academically appropriate resolution which may include a joint on-site review
151 by the council and the accrediting agency.

152 (5) The council also may review the academic standards of unaccredited institutions and
153 may require such institutions to maintain recognized academic standards that are reasonably
154 appropriate to the nature of the institution and the training offered.

155 (k) The council may authorize an investigation of written student complaints alleging a
156 violation of this section, council rules or accreditation standards and may take appropriate action
157 based on the findings of such an investigation.

158 (l) All evaluations or investigations of correspondence, business, occupational and trade
159 schools and actions resulting from such evaluations or investigations shall be made in accordance
160 with rules promulgated by the council pursuant to §29A-3A-1 *et seq.* of this code.

161 (m) In regard to private, proprietary educational institutions operating under this section of
162 the code, accredited by a national or regional accrediting agency or association recognized by
163 the United States Department of Education and which provide training at a campus located in this
164 state:

165 (1) Any rule or standard which is authorized by this or any section of the code or other law
166 and which is now in effect or promulgated hereafter by the council (or other agency with
167 jurisdiction) shall be clearly, specifically and expressly authorized by narrowly construed enabling
168 law and shall be unenforceable and without legal effect unless authorized by an Act of the
169 Legislature under the provisions of §29A-3A- 1 *et seq.* of this code.

170 (2) Notwithstanding any other provision of this section or other law to the contrary, the
171 institution's accrediting agency standards, procedures and criteria shall be accepted as the
172 standards and rules of the council (or other agency with jurisdiction) and as meeting other law or
173 legal requirements relating to the operation of proprietary institutions which such council or other
174 agency has the legal authority to enforce under any section of the code or other law. Nothing in
175 this section denies students the use of remedies that would otherwise be available under state or
176 federal consumer laws or federal law relating to federal college financial assistance programs.

177 (3) Accredited institutions operating hereunder are hereby recognized as postsecondary.
178 Academic progress is measured and reported in credit hours and all reports/documents are filed
179 on a credit-hour basis unless the institution notifies the council that it utilizes clock hours as its
180 unit of measurement.

181 (n) A representative of any school who solicits, sells or offers to sell courses of instruction
182 to any resident of this state for consideration or remuneration unless the school first applies for a
183 permit, or obtains a permit, is guilty of a misdemeanor and, upon conviction thereof, shall be fined
184 not more than \$200 per day per violation, or ~~imprisoned~~ confined in jail not more than 60 days, or
185 both fined and ~~imprisoned~~ confined. No correspondence, business, occupational or trade school
186 ~~shall~~ may maintain an action in any court of this state to recover for services rendered pursuant
187 to a contract solicited by the school if the school did not hold a valid permit at the time the contract
188 was signed by any of the parties thereto. The Attorney General or any county prosecuting
189 attorney, at the request of the council or upon his or her own motion, may bring any appropriate
190 action or proceeding in any court of competent jurisdiction for the enforcement of the provisions
191 of this section relating to permits, bonds and sureties.

192 (o) In regard to institutions operating under this section, all substantive standards and
193 procedural requirements established by the council (or the West Virginia state program review
194 entity or other agency with jurisdiction over institutions operating hereunder) shall meet all
195 substantive and procedural standards of due process relating to the protection of an individual

196 citizen's property rights as provided under the United States Constitution and shall follow the
197 substantive standards and procedural requirements established by or under authority of this
198 section.

NOTE: The purpose of this bill is to increase the amount of the bond required to be posted by proprietary schools, establish methods of bonding, and require suspension of a proprietary school's permit if there is not requisite bond coverage.

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