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I N S E N A T E

February 1, 2010

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to establishing the textbook transparency act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The education law is amended by adding a new article 15-D
2 to read as follows:

3 ARTICLE 15-D

4 TEXTBOOK TRANSPARENCY ACT

5 SECTION 730. SHORT TITLE.

6 731. DEFINITIONS.

7 732. INFORMATION COLLEGE TEXTBOOK PUBLISHERS MUST PROVIDE TO
8 EDUCATIONAL INSTITUTIONS.

9 733. USING UNDISBURSED FINANCIAL AID TO PURCHASE TEXTBOOKS.

10 734. SEVERABILITY.

11 S 730. SHORT TITLE. THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE
12 "TEXTBOOK TRANSPARENCY ACT."

13 S 731. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL
14 HAVE THE FOLLOWING MEANINGS UNLESS OTHERWISE SPECIFIED:

15 1. "ADOPTER" MEANS ANY FACULTY MEMBER OR ACADEMIC DEPARTMENT AT AN
16 APPROVED INSTITUTION OF HIGHER EDUCATION RESPONSIBLE FOR CONSIDERING AND
17 CHOOSING COURSE MATERIALS TO BE USED IN CONNECTION WITH THE ACCREDITED
18 COURSES TAUGHT AT THE APPROVED INSTITUTION OF HIGHER EDUCATION;

19 2. "APPROVED INSTITUTION OF HIGHER EDUCATION" MEANS AN EDUCATIONAL
20 INSTITUTION LOCATED IN THIS STATE WHICH:

21 A. IS DIRECTLY CONTROLLED OR ADMINISTERED BY A PUBLIC AGENCY OR POLI-
22 TICAL SUBDIVISION;

23 B. RECEIVES APPROPRIATIONS DIRECTLY OR INDIRECTLY FROM THE LEGISLATURE
24 FOR OPERATING EXPENSES;

25 C. PROVIDES A POSTSECONDARY COURSE OF INSTRUCTION AT LEAST SIX MONTHS
26 IN LENGTH LEADING TO OR DIRECTLY CREDITABLE TOWARD A DEGREE OR CERTIF-
27 ICATE;

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD15342-02-0

1 D. MEETS THE STANDARDS FOR ACCREDITATION AS DETERMINED BY THE MIDDLE
2 STATES COMMISSION ON HIGHER EDUCATION, OR IF A PUBLIC JUNIOR COLLEGE
3 MEETS THE STANDARDS ESTABLISHED BY THE COORDINATING BOARD FOR HIGHER
4 EDUCATION FOR SUCH PUBLIC JUNIOR COLLEGES, OR BY OTHER ACCREDITING
5 BODIES RECOGNIZED BY THE UNITED STATES OFFICE OF EDUCATION OR BY UTILIZ-
6 ING ACCREDITATION STANDARDS APPLICABLE TO THE INSTITUTION AS ESTABLISHED
7 BY THE COORDINATING BOARD FOR HIGHER EDUCATION;

8 E. DOES NOT DISCRIMINATE IN THE HIRING OF ADMINISTRATORS, FACULTY AND
9 STAFF OR IN THE ADMISSION OF STUDENTS ON THE BASIS OF RACE, COLOR, RELI-
10 GION, SEX, OR NATIONAL ORIGIN AND IS OTHERWISE IN COMPLIANCE WITH THE
11 FEDERAL CIVIL RIGHTS ACTS OF 1964 AND 1968 AND EXECUTIVE ORDERS ISSUED
12 PURSUANT THERETO; AND

13 F. PERMITS FACULTY MEMBERS TO SELECT TEXTBOOKS WITHOUT INFLUENCE OR
14 PRESSURE BY ANY RELIGIOUS OR SECTARIAN SOURCE;

15 3. "COLLEGE TEXTBOOK" MEANS A TEXTBOOK OR A SET OF TEXTBOOKS USED FOR
16 A COURSE OF POSTSECONDARY EDUCATION AT AN APPROVED PUBLIC INSTITUTION OF
17 HIGHER EDUCATION;

18 4. "INTEGRATED TEXTBOOK" MEANS A COLLEGE TEXTBOOK THAT:

19 A. IS COMBINED WITH MATERIALS DEVELOPED BY A THIRD PARTY AND THAT, BY
20 THIRD-PARTY CONTRACTUAL AGREEMENT, MAY NOT BE OFFERED BY PUBLISHERS
21 SEPARATELY FROM THE COLLEGE TEXTBOOK WITH WHICH THE MATERIALS ARE
22 COMBINED; OR

23 B. INCLUDES FUNCTIONALLY INTERDEPENDENT COURSE MATERIALS DESIGNED TO
24 BE USED SOLELY AS A SINGLE UNIT AND WHOSE SEPARATION WOULD SUBSTANTIALLY
25 DEGRADE THE ACADEMIC CONTENT SO THAT IT WOULD NOT BE USABLE TO THE
26 STUDENT;

27 5. "PRODUCTS" MEANS ALL VERSIONS OF A COLLEGE TEXTBOOK OR SET OF
28 COLLEGE TEXTBOOKS, EXCEPT CUSTOM TEXTBOOKS OR SPECIAL EDITIONS OF TEXT-
29 BOOKS, AVAILABLE IN THE SUBJECT AREA FOR WHICH A PROSPECTIVE PURCHASER
30 IS TEACHING A COURSE, INCLUDING SUPPLEMENTAL MATERIAL, BOTH WHEN SOLD
31 TOGETHER OR SEPARATELY FROM A COLLEGE TEXTBOOK;

32 6. "SUPPLEMENTAL MATERIAL" MEANS EDUCATIONAL MATERIAL THAT MAY ACCOM-
33 PANY A COLLEGE TEXTBOOK, INCLUDING PRINTED MATERIALS, COMPUTER DISKS,
34 WEBSITE ACCESS, AND ELECTRONICALLY DISTRIBUTED MATERIALS, THAT IS
35 NEITHER:

36 A. BOUND BY THIRD-PARTY CONTRACTUAL AGREEMENTS TO BE SOLD IN AN INTE-
37 GRATED TEXTBOOK; NOR

38 B. A COMPONENT OF AN INTEGRATED TEXTBOOK.

39 S 732. INFORMATION COLLEGE TEXTBOOK PUBLISHERS MUST PROVIDE TO EDUCA-
40 TIONAL INSTITUTIONS. 1. TO THE EXTENT PRACTICABLE, AN APPROVED INSTITU-
41 TION OF HIGHER EDUCATION SHALL ENCOURAGE FACULTY MEMBERS OR ADOPTERS TO
42 PLACE THEIR INITIAL ORDERS FOR COLLEGE TEXTBOOKS WITH SUFFICIENT TIME
43 FOR THE CAMPUS BOOKSTORE TO FACTOR SUCH INFORMATION INTO STUDENT
44 BUYBACK, RESEARCH THE AVAILABILITY OF THE COURSE MATERIAL, AND EXCHANGE,
45 WHEN APPROPRIATE, RELEVANT INFORMATION WITH FACULTY TO SUPPORT EFFECTIVE
46 USE OF COURSE MATERIALS SUCH AS BUNDLES AND TO PROMOTE COST EFFICIENCIES
47 FOR STUDENTS.

48 2. EACH PUBLISHER OF COLLEGE TEXTBOOKS SHALL PROVIDE, UPON REQUEST,
49 THE FOLLOWING INFORMATION TO FACULTY MEMBERS OR ADOPTERS AT AN APPROVED
50 INSTITUTION OF HIGHER EDUCATION, WHENEVER THE PUBLISHER PROVIDES A
51 FACULTY MEMBER OR ADOPTER WITH INFORMATION ABOUT THE PUBLISHER'S
52 PRODUCTS:

53 A. THE PRICE AT WHICH THE PUBLISHER WOULD MAKE THE PRODUCTS AVAILABLE
54 TO THE CAMPUS BOOKSTORE;

55 B. THE SUBSTANTIAL CONTENT REVISIONS FOR SUCH PRODUCTS MADE BETWEEN A
56 CURRENT TEXTBOOK EDITION AND THE PREVIOUS EDITION, IF ANY;

1 C. THE COPYRIGHT DATES OF ALL PREVIOUS EDITIONS OF SUCH COLLEGE TEXT-
2 BOOK IN THE PRECEDING TEN YEARS, IF ANY; AND

3 D. WHETHER THE PRODUCTS ARE AVAILABLE IN ANY OTHER FORMAT, INCLUDING
4 PAPERBACK AND UNBOUND, AND THE PRICE AT WHICH THE PUBLISHER WOULD MAKE
5 THE PRODUCTS IN THE OTHER FORMATS AVAILABLE TO THE CAMPUS BOOKSTORE.

6 3. A PUBLISHER THAT SELLS A COLLEGE TEXTBOOK AND ANY SUPPLEMENTAL
7 MATERIAL ACCOMPANYING SUCH COLLEGE TEXTBOOK AS A SINGLE BUNDLE SHALL
8 ALSO MAKE AVAILABLE THE COLLEGE TEXTBOOK AND EACH SUPPLEMENTAL MATERIAL
9 AS SEPARATE AND UNBUNDLED ITEMS, EACH SEPARATELY PRICED.

10 S 733. USING UNDISBURSED FINANCIAL AID TO PURCHASE TEXTBOOKS. WHERE
11 EXISTING TECHNOLOGY AND CONTRACTS MAKE IT FEASIBLE, AN APPROVED PUBLIC
12 INSTITUTION OF HIGHER EDUCATION SHALL DEVELOP A POLICY THAT PERMITS
13 STUDENTS TO USE FINANCIAL AID THAT HAS NOT BEEN DISBURSED FOR TUITION OR
14 FEES TO PURCHASE REQUIRED TEXTBOOKS FOR COURSES TAUGHT AT THE INSTITU-
15 TION AT STORES ON THE CAMPUS OF THE INSTITUTION.

16 S 734. SEVERABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, OR SECTION OF
17 THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURISDICTION TO
18 BE INVALID AND AFTER EXHAUSTION OF ALL FURTHER JUDICIAL REVIEW, THE
19 JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE REMAINDER THEREOF,
20 BUT SHALL BE CONFINED IN ITS OPERATION TO THE CLAUSE, SENTENCE, PARA-
21 GRAPH, OR SECTION OF THIS ARTICLE DIRECTLY INVOLVED IN THE CONTROVERSY
22 IN WHICH THE JUDGMENT SHALL HAVE BEEN RENDERED. THE PROVISIONS OF THIS
23 SECTION SHALL APPLY TO ALL SECTIONS OF THIS ARTICLE EXCEPT THOSE
24 SECTIONS WHICH ARE EXPRESSLY SUBJECT TO SEPARATE SEVERABILITY PROVISIONS
25 CONTAINED HEREINBEFORE IN THIS ARTICLE.

26 S 2. This act shall take effect on the first of July next succeeding
27 the date on which it shall have become a law.