S T A T E O F N E W Y O R K

1001

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. PEOPLES-STOKES -- read once and referred 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:

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

ARTICLE 15-D

TEXTBOOK TRANSPARENCY ACT

SECTION 730. SHORT TITLE.
731. DEFINITIONS.
732. INFORMATION COLLEGE TEXTBOOK PUBLISHERS MUST PROVIDE TO EDUCATIONAL INSTITUTIONS.
733. USING UNDISBURSED FINANCIAL AID TO PURCHASE TEXTBOOKS.
734. SEVERABILITY.

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

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

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

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

A. IS DIRECTLY CONTROLLED OR ADMINISTERED BY A PUBLIC AGENCY OR POLITICAL SUBDIVISION;

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

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

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C. PROVIDES A POSTSECONDARY COURSE OF INSTRUCTION AT LEAST SIX MONTHS IN LENGTH LEADING TO OR DIRECTLY CREDITABLE TOWARD A DEGREE OR CERTIFICATE;

D. MEETS THE STANDARDS FOR ACCREDITATION AS DETERMINED BY THE MIDDLE STATES COMMISSION ON HIGHER EDUCATION, OR IF A PUBLIC JUNIOR COLLEGE MEETS THE STANDARDS ESTABLISHED BY THE COORDINATING BOARD FOR HIGHER EDUCATION FOR SUCH PUBLIC JUNIOR COLLEGES, OR BY OTHER ACCREDITING BODIES RECOGNIZED BY THE UNITED STATES OFFICE OF EDUCATION OR BY UTILIZING ACCREDITATION STANDARDS APPLICABLE TO THE INSTITUTION AS ESTABLISHED BY THE COORDINATING BOARD FOR HIGHER EDUCATION;

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

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

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

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

A. IS COMBINED WITH 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 MATERIALS ARE COMBINED; OR

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

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

6. "SUPPLEMENTAL MATERIAL" MEANS EDUCATIONAL MATERIAL THAT MAY ACCOMPANY A COLLEGE TEXTBOOK, INCLUDING PRINTED MATERIALS, COMPUTER DISKS, WEBSITE ACCESS, AND ELECTRONICALLY DISTRIBUTED MATERIALS, THAT IS NEITHER:

A. BOUND BY THIRD-PARTY CONTRACTUAL AGREEMENTS TO BE SOLD IN AN INTEGRATED TEXTBOOK; NOR

B. A COMPONENT OF AN INTEGRATED TEXTBOOK.

S 732. INFORMATION COLLEGE TEXTBOOK PUBLISHERS MUST PROVIDE TO EDUCATIONAL INSTITUTIONS. 1. TO THE EXTENT PRACTICABLE, AN APPROVED INSTITUTION OF HIGHER EDUCATION SHALL ENCOURAGE FACULTY MEMBERS OR ADOPTERS TO PLACE THEIR INITIAL ORDERS FOR COLLEGE TEXTBOOKS WITH SUFFICIENT TIME FOR THE CAMPUS BOOKSTORE TO FACTOR SUCH INFORMATION INTO STUDENT BUYBACK, RESEARCH THE AVAILABILITY OF THE COURSE MATERIAL, AND EXCHANGE, WHEN APPROPRIATE, RELEVANT INFORMATION WITH FACULTY TO SUPPORT EFFECTIVE USE OF COURSE MATERIALS SUCH AS BUNDLES AND TO PROMOTE COST EFFICIENCIES FOR STUDENTS.

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

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

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

C. THE COPYRIGHT DATES OF ALL PREVIOUS EDITIONS OF SUCH COLLEGE TEXTBOOK IN THE PRECEDING TEN YEARS, IF ANY; AND

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

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

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

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

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