

SENATE BILL 1098

F2

4lr3381

By: **Senator Conway**

Introduced and read first time: March 3, 2014

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Public Institutions of Higher Education – Sale of Textbooks – Audits**

3 FOR the purpose of requiring the Office of Legislative Audits to conduct an annual
4 audit of certain institutions of higher education to ensure compliance with
5 certain provisions of law relating to the sale of textbooks; requiring a certain
6 audit to include certain information; requiring the Legislative Auditor to report
7 certain findings of an audit to the Maryland Higher Education Commission and
8 the General Assembly on or before a certain date each year; specifying a certain
9 time period for a certain audit; requiring the Legislative Auditor to report
10 certain findings of an initial audit to the Maryland Higher Education
11 Commission and the General Assembly on or before a certain date; and
12 generally relating to audits of the sale of textbooks by public institutions of
13 higher education.

14 BY repealing and reenacting, with amendments,
15 Article – Education
16 Section 15–112
17 Annotated Code of Maryland
18 (2008 Replacement Volume and 2013 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article – Education**

22 15–112.

23 (a) (1) In this section the following words have the meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) (i) “Bookstore” means any entity that offers books or other
2 course materials for sale and is licensed by the Comptroller under Title 11, Subtitle 7
3 of the Tax – General Article.

4 (ii) “Bookstore” includes campus bookstores and online vendors.

5 (3) (i) “Bundle” means one or more college textbooks or other
6 supplemental material that are packaged together to be sold as course materials for
7 one price.

8 (ii) “Bundle” does not include single, custom, or integrated
9 textbooks.

10 (4) “Campus bookstore” means a bookstore under the jurisdiction of an
11 institution of higher education.

12 (5) (i) “Custom textbook” means a college textbook that is compiled
13 by a publisher at the direction of a faculty member or other person or adopting entity
14 in charge of selecting course materials at an institution of higher education.

15 (ii) “Custom textbook” includes original instructor material,
16 previously copyrighted material, or copyrighted third-party material.

17 (iii) “Custom textbook” does not include purely aesthetic changes
18 to a college textbook when compared with a prior edition of a college textbook such as
19 commemorative editions.

20 (6) “Integrated textbook” means a college textbook that is combined
21 with:

22 (i) Materials developed by a third party and that, by
23 third-party contractual agreement, may not be offered by publishers separately from
24 the college textbook with which the materials are combined; or

25 (ii) Other materials that are so interrelated with the content of
26 the college textbook that the separation of the college textbook from the other
27 materials would render the college textbook unusable for its intended purpose.

28 (7) “ISBN” means the unique International Standard Book Number
29 assigned to college course material that is used by publishers to identify each textbook
30 edition and other course material, including bundles.

31 (8) “Price” means the price at which the publisher would make the
32 college textbook or supplemental material available to a bookstore and, if available,
33 the price at which the publisher would make the college textbook or supplemental
34 material available to the public.

1 (9) “Substantial content” means a part of a college textbook, such as
2 new chapters, new material covering additional eras of time, new themes, or new
3 subject matter.

4 (10) (i) “Supplemental material” means educational material
5 developed to accompany a college textbook that is not being used as a component of an
6 integrated textbook.

7 (ii) “Supplemental material” includes printed materials and
8 electronic materials such as computer disks and web access codes.

9 (11) “Textbook” includes custom textbooks to the maximum extent
10 practicable.

11 (b) This section does not apply to the overseas programs of the University of
12 Maryland University College.

13 (c) Each public institution of higher education in the State shall develop and
14 implement:

15 (1) An informational campaign to assist faculty and make them aware
16 of textbook–related issues, including:

17 (i) The price of college textbooks and of supplemental material;

18 (ii) The existence of variances in price of bundled and
19 unbundled course materials;

20 (iii) Substantial content revisions made between the current
21 edition of a college textbook or supplemental material and the previous edition of the
22 college textbook or supplemental material as reported to the institution under
23 subsection (e) of this section;

24 (iv) Which textbooks are integrated textbooks and are therefore
25 not subject to subsection (f)(3) of this section, as reported by the publisher under
26 subsection (e) of this section; and

27 (v) The fiscal impact to students of the high cost of college
28 textbooks;

29 (2) A procedure by which bookstores and students are made aware of
30 the information required to be disclosed under subsection (g) of this section; and

31 (3) A best–practices process for faculty in selecting college textbooks
32 and supplemental material that:

1 (i) Ensures early adoption of college textbooks and
2 supplemental material;

3 (ii) Encourages the maximum usage of used college textbooks
4 and of previous editions of college textbooks, when possible;

5 (iii) For undergraduate college textbooks, ensures that the
6 majority of the assigned material will be used in the course unless it would be in the
7 student's financial interest to purchase separate materials; and

8 (iv) Ensures that faculty are aware of various outlets for the
9 supply of college textbooks and supplemental material.

10 (d) (1) Each public institution of higher education shall develop a process
11 by which faculty members acknowledge the information under paragraph (2) of this
12 subsection.

13 (2) Before selecting a college textbook or supplemental material and
14 before transmitting the selection to a campus bookstore, providing the selection to any
15 other bookstore, or posting the selection on the website of the public institution of
16 higher education, a faculty member shall acknowledge:

17 (i) 1. If selecting a different college textbook from a
18 different publisher, the cost of the new selection versus the cost of the previous
19 selection; or

20 2. If selecting a current edition of a college textbook:

21 A. The differences in substantial content between the
22 current edition of the textbook and the previous edition of the textbook as reported by
23 the publisher under subsection (e) of this section;

24 B. That the use of the current edition is appropriate due
25 to a material change in substantial content between the current edition and the
26 previous edition;

27 C. The difference in price between the current edition of
28 the textbook and the previous edition of the textbook; and

29 D. That the previous edition of the textbook may be
30 available to students at a lower price via the used book market;

31 (ii) That an integrated textbook is not subject to subsection (f)(3)
32 of this section; and

33 (iii) That supplemental material included in a bundle is intended
34 for use in the course.

1 (e) (1) A publisher that sells college textbooks or supplemental material
2 and provides information regarding a college textbook or supplemental material to a
3 faculty member, other adopting entity in charge of selecting course materials, or the
4 administration of an institution of higher education shall disclose with this
5 information, in writing, by paper or electronic means:

6 (i) The price of the college textbook or supplemental material;

7 (ii) The title, author, publisher, edition, current and three
8 previous copyright dates, publication date when available, and ISBN of the college
9 textbook and supplemental material, both as bundled and unbundled items;

10 (iii) Substantial content revisions made between the current
11 edition of the college textbook or supplemental material and the previous edition of the
12 college textbook or supplemental material;

13 (iv) Other available formats for the college textbook or
14 supplemental material such as paperback or unbound; and

15 (v) A list of textbooks that are classified as integrated
16 textbooks.

17 (2) Each institution of higher education in the State shall develop a
18 process by which faculty members acknowledge having been informed of the
19 disclosures required under paragraph (1) of this subsection and the impact that the
20 high cost of college textbooks and supplemental material has on students.

21 (f) (1) Except as provided in paragraph (4) of this subsection, a publisher
22 and a campus bookstore shall provide and sell college textbooks and supplemental
23 material in the same manner as selected and ordered by faculty members.

24 (2) (i) If a college textbook or supplemental material is unavailable
25 as ordered, the publisher and the campus bookstore shall work with the faculty
26 member to find alternatives.

27 (ii) A publisher collaborating with a campus bookstore and a
28 faculty member under subparagraph (i) of this paragraph shall provide price
29 information for alternative college textbooks and supplemental material.

30 (3) A publisher that sells a college textbook and any supplemental
31 material accompanying the college textbook in a bundle shall also make available the
32 college textbook and the supplemental material as separate and unbundled items,
33 each separately priced.

34 (4) With the permission of a faculty member, a campus bookstore may
35 sell college textbooks and supplemental material in a different manner than as

1 selected and ordered by the faculty member for the purpose of providing used college
2 textbooks, prior editions, or other lower-cost options to students.

3 (g) (1) (i) Subject to subparagraph (ii) of this paragraph, on the
4 request of a bookstore, an institution of higher education shall provide the information
5 listed under paragraph (3) of this subsection to a bookstore by the earlier of:

6 1. Within 1 week of a faculty member's selection of a
7 college textbook or supplemental material and transmission to a campus bookstore; or

8 2. When the selection by a faculty member of a college
9 textbook or supplemental material is finalized.

10 (ii) A bookstore that obtains information under subparagraph
11 (i)1 of this paragraph may not make the information available to students or members
12 of the public until the information is made available to the bookstore in accordance
13 with paragraph (2) of this subsection.

14 (2) (i) An institution of higher education shall make the
15 information listed under paragraph (3) of this subsection available to bookstores,
16 students, and the rest of the public by posting the information on its website by the
17 earlier of:

18 1. Subject to paragraphs (4) and (5) of this subsection, 3
19 weeks following the selection by a faculty member of a college textbook or
20 supplemental material; or

21 2. When the selection by a faculty member of a college
22 textbook or supplemental material is finalized.

23 (ii) In addition to the information posted under subparagraph (i)
24 of this paragraph, an institution shall post on its website:

25 1. Whether supplemental material is required or only
26 suggested by faculty; and

27 2. Whether a previous edition of an assigned college
28 textbook will suffice.

29 (3) The information made available under paragraphs (1) and (2) of
30 this subsection shall include the:

31 (i) Title;

32 (ii) Author;

33 (iii) Publisher;

- 1 (iv) Edition;
- 2 (v) Copyright date and publication date, when available;
- 3 (vi) ISBN; and
- 4 (vii) Anticipated enrollment for the course.

5 (4) (i) An institution of higher education shall inform a bookstore,
6 students, or members of the public who access the website of the institution under
7 paragraph (2) of this subsection if the selection of the particular college textbook,
8 supplemental material, or bundle has not been finalized by the faculty member.

9 (ii) In addition to the disclosure made under subparagraph (i) of
10 this paragraph, an institution, campus bookstore, or other bookstore that offers a
11 college textbook or supplemental material for sale prior to the selection being finalized
12 shall provide:

13 1. A caveat regarding the potential consequences of
14 purchasing the particular college textbook, supplemental material, or bundle prior to
15 the selection being finalized; and

16 2. The return policy of the campus bookstore or other
17 bookstore, as appropriate.

18 (5) (i) Notwithstanding paragraphs (1) and (2) of this subsection,
19 upon request to an institution, an extension of time may be granted to a faculty
20 member from the requirement to post the selection of a college textbook or
21 supplemental material prior to the selection being finalized.

22 (ii) The extension granted under subparagraph (i) of this
23 paragraph shall be approved by the faculty Department Chair and the Dean or
24 Division Head of the institution.

25 (iii) The extension shall include a written statement of
26 explanation for the extension.

27 (iv) An institution shall post the written statement on its
28 website instead of the selection, as appropriate.

29 (h) A public institution of higher education may not encourage or promote
30 the creation or sale of college textbooks that consist of purely aesthetic changes to a
31 prior edition of a college textbook such as a commemorative edition.

1 (i) This section may not be construed to supersede the institutional
2 autonomy or academic freedom of faculty members involved in the selection of college
3 textbooks and supplemental material.

4 (J) (1) IN ADDITION TO THE AUDITS REQUIRED UNDER § 2-1220 OF
5 THE STATE GOVERNMENT ARTICLE, THE OFFICE OF LEGISLATIVE AUDITS
6 SHALL CONDUCT AN ANNUAL AUDIT OF EACH PUBLIC INSTITUTION OF HIGHER
7 EDUCATION TO ENSURE COMPLIANCE WITH THIS SECTION.

8 (2) THE AUDIT SHALL REPORT ON THE COMPLIANCE OF A PUBLIC
9 INSTITUTION OF HIGHER EDUCATION WITH THIS SECTION, INCLUDING:

10 (I) THE PROCESS DEVELOPED BY THE PUBLIC INSTITUTION
11 OF HIGHER EDUCATION AS REQUIRED UNDER SUBSECTION (D)(2) OF THIS
12 SECTION; AND

13 (II) THE EXTENT TO WHICH THE PUBLIC INSTITUTION OF
14 HIGHER EDUCATION HAS PROVIDED THE INFORMATION REQUIRED UNDER
15 SUBSECTION (G) OF THIS SECTION WITHIN THE TIME PERIOD REQUIRED.

16 (3) THE AUDIT SHALL INCLUDE INFORMATION REGARDING:

17 (I) THE EXTENT TO WHICH FACULTY MEMBERS, OTHER
18 ENTITIES IN CHARGE OF SELECTING COURSE MATERIALS, OR THE
19 ADMINISTRATION OF A PUBLIC INSTITUTION OF HIGHER EDUCATION HAVE
20 RECEIVED THE INFORMATION REQUIRED TO BE DISCLOSED BY A PUBLISHER
21 UNDER SUBSECTION (E) OF THIS SECTION; AND

22 (II) THE AVAILABILITY OF UNBUNDLED TEXTBOOKS AND
23 SUPPLEMENTAL ITEMS FROM PUBLISHERS AS REQUIRED UNDER SUBSECTION
24 (F)(3) OF THIS SECTION.

25 (4) (I) ON OR BEFORE JULY 1, 2015, AND EACH YEAR
26 THEREAFTER, THE LEGISLATIVE AUDITOR SHALL SUBMIT A REPORT ON THE
27 FINDINGS OF THE AUDIT REQUIRED UNDER THIS SUBSECTION TO THE
28 COMMISSION AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE
29 GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.

30 (II) EACH AUDIT SHALL BE FOR THE PERIOD BEGINNING
31 MARCH 1 OF THE PREVIOUS YEAR AND ENDING ON THE LAST DAY OF FEBRUARY
32 OF THE YEAR THE REPORT IS DUE.

33 (III) ON OR BEFORE SEPTEMBER 1, 2014, THE LEGISLATIVE
34 AUDITOR SHALL SUBMIT A REPORT ON THE FINDINGS OF AN INITIAL AUDIT OF

1 THE 2011, 2012, AND 2013 YEARS REQUIRED UNDER THIS SUBSECTION TO THE
2 COMMISSION AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE
3 GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 June 1, 2014.