

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1092
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Higher Education
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Commercial textbook publishers and college bookstores are promoting automatic billing programs where the college or university automatically bills students for course materials, and access to homework systems, along with their tuition and fees.

Students have been surprised by these automatic charges when they get their tuition and fee bills. By then, it is too late to exercise any opt out rights that they may have had. This forces students to pay publisher prices to rent a time-limited digital copy, even if they could save money by getting a used book or sharing a book, or if they prefer to study from a print copy.

S.B. 1092 will make sure students and their parents are made aware of the charges they will be expected to pay, and how they can opt in or out of such charges. It also requires disclosure of how student data will be collected and used, and how students can opt out of such use.

If students are being billed for materials by credit hour, the bill requires these charges to be included up front as part of tuition, rather than being tacked on afterwards, unless the charge is only assessed if the student opts in. This ensures there are no surprises.

The bill also requires that if an institution chooses to label courses as having "low-cost" materials, as many are doing, they must indicate how they are defining "low-cost."

The bill ensures that all automatic billing agreements are open records, so students and policymakers can see if students are really benefitting from these arrangements.

Changes to the committee substitute:

Removes Section 51.452(e) from the initial bill.

Section 51.456(a) adds new definition for "digital courseware" and removes "learning content management systems." New definition addresses the problem of technology fees that all students pay for Canvas, etc., but still requires disclosure when content and software is required and charged as a course fee.

"Learning content management systems" is replaced with "digital courseware" throughout the bill.

Section 51.456(b) adds language to ensure disclosure requirements do not apply to a charge assessed for a purchase initiated by the student separately from the enrollment process at the institution.

Section 51.456(c)(1)(B) removes "system provider" to limit the data collection transparency provision to just the "publisher of the textbook or digital courseware."

Section 51.456(d) adds language to clarify that this provision and sub-provisions only apply to automatic charges based on the number of credit hours or the number of courses taken.

Section 51.456(e) allows institutions an exemption from the requirements in Section 51.456(d) if the charges are assessed on an opt-in basis.

51.456(e)(1) and (2) state that charges are not considered opt-in options if a student needs the textbook or digital coursework to earn the maximum grade for the course and if the student can only legally obtain the textbook from the institution or certain vendors specified by the institution.

Section 51.456(f) states that any agreement by the institution with any entity to assess an automatic charge may not contain quotas, charges, or penalties based on the number or percentage of students or course sections that participate.

Section 51.456(f)(2) makes any agreement between an institution and any entity to assess an automatic charge public information under Chapter 552, Government Code.

Section 51.456(g) addresses concerns to maintain educational quality and academic freedom. Establishes academic freedom as an important component for any program focused on instructional materials.

Section 54.504(d) states that if an institution chooses to have automatic charges based on the number of credit hours or the number of courses taken included in "incidental fees," then the governing board of the institution shall include a description of the charge in any tuition notice.

C.S.S.B. 1092 amends current law relating to the disclosure by public institutions of higher education of certain information regarding textbooks and digital courseware and certain charges assessed for those items.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter I, Chapter 51, Education Code, by adding Section 51.456, as follows:

Sec. 51.456. AUTOMATIC CHARGES FOR TEXTBOOKS OR DIGITAL COURSEWARE. (a) Defines "digital courseware" and "institution of higher education."

(b) Requires an institution of higher education to disclose to a student enrolled at the institution as provided by this section an automatic charge for textbooks or access to digital courseware assessed by the institution or another entity to the student on the student's enrollment in a course, course section, or program or in the institution for the applicable semester or term, regardless of whether the charge is assessed on an opt-in, opt-out, or compulsory basis. Provides that this subsection does not apply to a charge assessed for a purchase initiated by the student separately from the enrollment process at the institution, such as the purchase of a textbook at a college bookstore that may be charged to the student's account at the institution.

(c) Requires the institution of higher education, for a charge described by Subsection (b) that is assessed based on the cost of required or recommended textbooks or access to digital courseware for a certain course or course section in which the student is enrolled, to:

(1) in a prominent location in the institution's course schedule under Section 51.452 (Dissemination of Course Schedule and List of Required

and Recommended Textbooks), state or provide an Internet website link to:

(A) the full amount of the charge;

(B) if the charge is for a textbook in a primarily electronic format or for access to digital courseware, the terms under which the publisher of the textbook or digital courseware collects and uses student data obtained through a student's use of the textbook or digital courseware; and

(C) any provision that allows the student to opt in or opt out of the charge or the collection or use of the student's data; and

(2) itemize the charge separately from any other charges assessed for the course or course section in the institution's billing to the student.

(d) Requires the institution of higher education, for a charge described by Subsection (b) that is assessed on the basis of the number of semester credit hours or the equivalent or the number of courses in which the student is enrolled or on any other basis not described by Subsection (c), to:

(1) except as provided by Subsection (e), include the amount of the charge in the institution's tuition under Section 54.015 (Billing and Notification for Tuition) or in the institution's incidental fees under Section 54.504 (Incidental Fees); and

(2) in a prominent location in any written or electronic agreement authorizing the charge, disclose:

(A) if the charge is for a textbook in a primarily electronic format or for access to digital courseware, the terms under which the publisher of the textbook or digital courseware collects and uses student data obtained through a student's use of the textbook or digital courseware; and

(B) any provision that allows the student to opt in or opt out of the charge or the collection or use of the student's data.

(e) Provides that, notwithstanding Subsection (d)(1), an institution of higher education is not required to include the amount of a charge described by that subsection in the institution's tuition or incidental fees if the charge is assessed to a student only on an opt-in basis. Provides that for purposes of this subsection, a charge is not considered to be assessed on an opt-in basis if:

(1) the textbooks or access to digital courseware for which the charge is assessed is required for the student to earn the maximum possible grade for a course in which the student is enrolled; and

(2) for a charge for textbooks, the textbooks may only be legally obtained from the institution or certain vendors specified by the institution.

(f) Provides that an agreement between an institution of higher education and an entity under which the institution assesses on the entity's behalf or allows the entity to assess a charge described by Subsection (b) to students enrolled at the institution:

(1) is prohibited from providing for a quota, charge, or other penalty based on the number or percentage of students to whom the charge is assessed or courses or course sections for which the charge is assessed; and

(2) is public information under Chapter 552 (Public Information), Government Code.

(g) Requires that any effort by an institution of higher education to reduce the cost of textbooks or access to digital courseware for students enrolled at the institution also focus on maintaining the quality of education and protecting academic freedom.

(h) Prohibits this section from being construed to prohibit an institution of higher education from entering into an agreement with an entity under which a charge for textbooks or access to digital courseware is assessed to students enrolled at the institution on an opt-in or opt-out basis.

SECTION 2. Amends Section 54.504, Education Code, by adding Subsection (d), as follows:

(d) Requires the governing board of the institution, if a charge described by Section 51.456(b) is included as part of an institution of higher education's incidental fees under this section that are assessed to each student, or each undergraduate student, enrolled at the institution who does not opt out of the charge, to include a description of the amount of the charge in any notice of the amount of the institution's tuition provided to current or prospective students, the parents of current or prospective students, or the public. Requires that the description state or provide an Internet website link to any provision that allows a student to opt out of the charge.

SECTION 3. Provides that this Act applies beginning with the 2022 fall semester.

SECTION 4. Effective date: September 1, 2021.