

COPY

APRIL 14, 2010

PENNSYLVANIA HOUSE OF REPRESENTATIVES

**House Education Committee
House Consumer Affairs Committee
Joint Public Hearing**

TESTIMONY REGARDING HOUSE BILL 1286

ACCOUNTABILITY IN TEXTBOOK PUBLISHING PRACTICES ACT

PRESENTED BY:

DAN LIEBERMAN

FOUNDER, DYNAMIC STUDENT SERVICES INC.



TESTIMONY OF DAN LIEBERMAN

DYNAMIC BOOKSTORE @ WEST CHESTER UNIVERSITY OF PENNSYLVANIA

TABLE OF CONTENTS

1. BACKGROUND AND BIO – DAN LIEBERMAN
2. CREDENTIALS – LIST OF EXPERIENCES, AWARDS AND REASONS WHY YOU SHOULD LISTEN TO HIM.
3. THE EXISTING BILL – MISSING THE MARK AND UNEFFECTIVE.
4. WHAT IS MISSING IN THIS BILL: MAKE CHANGE WITH EFFECTIVE SOLUTION

1. BACKGROUND AND BIO – DAN LIEBERMAN

Dan Lieberman is a Pennsylvania resident from Boothwyn PA. He graduated from West Chester University in 1994. He started his textbook business in his dorm room at West Chester University in 1991. Two years later the Liebermans opened their first off campus bookstore across the street from West Chester University. Dynamic Student Services Inc, offered West Chester students discounted USED textbooks to compete against the university owned campus bookstore that carried mostly new books. 19 years later, Dan and his family have extended their expertise in the college textbook business with four (4) different bookstores at four campuses, and a rapidly growing online textbook company called PENNTEXT. (www.penntext.com)

2. CREDENTIALS AND EXPERIENCE

Dan and his family bring a very unique perspective to this legislative process. They have operated both off campus, and on campus institutional bookstores in Pennsylvania. Since 1991 they have competed against the West Chester University owned bookstore. During that time they have developed an excellent reputation with WCU faculty; and have maintained...

- The majority textbook market share. Estimated 55% of textbook sales.
- Estimated 85% market share in custom course packets.

In 1995 their family was awarded a contract by the State System of Higher Education to operate the official Cheyney University institutional bookstore. This lease contract lasted for 10 of years until they decided to no longer service the Cheyney campus in 2005. During that time they worked very closely with the Administration, the campus department heads, and faculty to develop a successful textbook adoption program that lead to a tremendous level of used books at the campus.

In 1995 , the Lieberman family filed a lawsuit against West Chester University, Millersville University and the State System of Higher Education regarding the access to textbook adoption information. Millersville University was able to convince the State Supreme court that they were actually not in possession of textbook adoption information and that their nonprofit foundation Student Services Inc, was in control of the records. SSI is the nonprofit company that operates the bookstore at that campus. Unfortunately the Supreme Court bought into the argument that the school didn't own the piece of paper professors used to place their orders. (This was prior to email and website adoptions) The Liebermans were forced out of business in 1998 and closed their off campus bookstore at Millersville University of Pennsylvania.

Currently, their Penntext Company operates mobile textbook locations at twenty eight (28) campuses across the commonwealth, with more to come. They are competing very hard against institutional bookstores that for years have had local monopolies. These institutionally owned bookstores are aggressively trying to thwart future competition with any means necessary.

The Lieberman's experience in operating both on campus and off campus bookstores has exposed them to all sides of the textbook adoption process. In both areas they have worked very closely with faculty and publishers as the go between for textbook information, pricing, availability and procurement. This gives them a unique perspective and understanding of how to best provide transparency with textbook adoptions, and lowering the prices of textbooks for students and their families.

Awards and recognition:

- 1994 - Dan Lieberman was named "Young Entrepreneur of the Year" for Eastern Pennsylvania by the United States Small Business Association.
- Liebermans Bookstores is named "Hitmaker" , Business of the decade for 2000-2010 by the US Small Business Administration.
- Three time member of the Philadelphia 100. (Fastest growing private companies in the Philadelphia Region for years 2004, 2008 and 2009)
- 2010 Eastern Pennsylvania , U.S. SBA "Family owned Business of the Year" (pool of 350,000 family owned businesses)

The extensive experience both on campus and off campus; working with faculty and publishers on their textbook adoptions is the reason why you should consider their testimony today.

3. THE EXISTING BILL – MISSING THE MARK AND UNEFFECTIVE.

THIS BILL WILL NOT BE EFFECTIVE IN LOWERING TEXTBOOK PRICES AND WILL ACTUALLY INCREASE THE PRICES OF NEW TEXTBOOK COMING FROM PUBLISHERS.

- A. Almost every section of this proposed bill is copied word for word from the national regulation! It falls short in many ways from creating any meaningful mandates to encourage lower prices. There is not emphasis on innovation, competition, used book programs, freedom of choice for students, and transparency as it relates to the textbook adoption process. I see no point in making a bill that simply copies an existing federal bill. That being said, if this language must stay in the bill, then it needs to be cleaned up and improved from where it stands now. Here are my suggestions:
- i. Section 3 – Definition of “Institution of Higher Learning”
This definition should be changed to include private colleges and universities as well. It should apply to any college or institution that receives funding from the commonwealth. In its current form this legislation only applies to SSHE schools, four state related schools and some community colleges. That is not adequate.
 - ii. Section 4a(1) -
Require publishers in this section to also disclose the price for which they will make their materials available to the public. This was in the federal regulations and has been removed. It should stay in the proposed bill.
 - iii. Section 4a(2)
Require the publisher to give the ISBN numbers and any other relevant information regarding the previous older editions so that the professors can actually do something meaningful with that information. Without that information, this doesn't benefit the students.
 - iv. Section 4a(3)
Require the publisher to also disclose the price they will make their materials available to the public. Again this was in the federal regulations and it should remain.
 - v. Section 4b
Strike all the wording in Section 4b including 4b(1) and 4b(2). This entire section is too intrusive and will place too much burden on the publisher. It actually will increase prices of the new textbooks by adding additional administrative costs into the books. Based on my experiences, publisher price increases usually happen during a specific time of the year, and on more than a 6 month schedule anyway.
 - vi. Section 4c(1)
Insert language similar to the State Senate Bill 929 that states “the combined price of the unbundled items, if purchased separately, shall not exceed the price of the items if purchased as a bundle.”

vii. Section 4c(2)

This section of the bill weakens the entire section 4c. The concept of the integrated book is not found in the national regulations and seems to be a loophole created by the publishers. Leaving this open will eventually turn every bundled package into an integrated book. If you keep this, you should just scrap the entire section 4c as it will render the section pointless. Publishers don't need to sign contracts with other companies that force their items to be sold together. The only reason to do that is to ensure more sales of the ancillary item anyway!

4. WHAT IS MISSING IN THIS BILL:

The true intent of this bill is to ensure that students are offered affordable access to course materials and to strengthen the existing Federal regulations. The best way to do that is to mandate changes that will create competition and choice in the marketplace.

Without competition students are going to pay higher prices, have less used books available and will suffer from lower levels of customer service. Making it easier for students to shop off-campus, online or anywhere they want will:

- Drive down prices of new and used books
- Reduce the number of expensive publisher bundle packages
- Increase the availability of discounted used textbooks
- Encourage better communication among bookstores, faculty and publishers.
- Increase overall customer service to students and faculty
- Dramatically reduce the costs of textbooks and course materials for PA students and their families.

Mandate the following:

A. Require institutions to collect college textbook adoption information and require them to share it with any party that requests such information.

This is critical to improving upon the federal regulations regarding the sharing of Textbook adoption information (materials professors are requiring in their courses). Current regulations only mention the institution sharing this information with the institutionally owned or affiliated bookstore.

Background: At every school in the state, professors make decisions about what books and materials they will require students to use in their course. This process plays a huge role in determining if bookstores will have the opportunity to source cheaper, discounted USED textbooks. Earlier textbook adoptions = more time for bookstores to source valuable, discounted used books.

This process of proving this information to competitors is already in place at a few state schools. It works. It's efficient and it is not a burden on the institutions at all. Some institutions are now using the federal regulations as an opportunity to skirt their responsibility in sharing this textbook adoption information with their off campus counterparts. They are claiming that since they are already going to post ISBN's and titles onto their websites, that they are no longer responsible for sharing the information directly. This is an attempt to delay the sharing of textbook adoption information with their competition, thereby creating a huge competitive advantage and narrowing the window for their competition to seek out lower priced textbooks. See exhibits attached at the end of this packet.

In order to ensure more discounted USED textbooks, and more choices for students it is critical for you to mandate the following:

1. This information should be made available to any party that requests it, in the same manner, at the same time, and in the same cost as it is provided to the institutional bookstore. This transparency will dramatically lower the prices of college textbooks.
2. "Any party" shall be defined to include but not be limited to off campus bookstores, online bookstores or any other party who seeks this information.
3. This should apply to any colleges and universities in the state that receive any state or federal funding.
4. Textbook adoption information should include author, title, publisher, copyright year, edition, ISBN (critical component), the course it is used for, enrollment expected and all other typical adoption information.

B. Require institutions to share course registration information

This information would include the name of the professor, course name, section number, course time, maximum enrollment, and actual student enrollment. Just as the textbook information is shared, this information should be made available to any requesting party.

C. Publication of textbook adoption information and course registration information.

The national regulations already spell out clearly how institutions are supposed to post this information onto their websites. Many institutions are attempting to shield this information from the public by hiding it behind password protected pages that only students at the institution are able to access with their online accounts. This should be prohibited. This information should be posted immediately as it is received from the faculty or the person who is placing the textbook adoptions.

D. Loopholes need to be closed

Institutions should not be given the leeway of determining if the sharing of textbook adoption information with other parties is "practicable". This creates a loophole that institutions will use in order to hoard this information away from potential competitors. The concern about institutions sharing this information on time should really reflect their responsibility to share it immediately upon receiving it from the faculty, department or person responsible for the adoption of such material. Sharing this information is not a burden on any institution and claims as such are a clear attempt at confusing you over these issues. There are hundreds of schools across the country that already do this.

E. Prohibit institutions from restricting students with financial aid from using their expected financial aid dollars strictly on campus.

Include a mandate that will free up student financial aid, student grants and/or student loans and on-campus debit card systems (all other competitors are shut out). This will insure that students and their families are not held hostage and forced to shop on-campus, at higher prices.

A very large percentage of all college students in the commonwealth are recipients of some sort of financial aid or scholarships. These are the people that need to save money the most! This bill must include a mandate that allows people to use their funds to compare and shop at either off-campus bookstores or on the internet. This will enable them to make the smart choices that benefit them the most. The way the current system works, it prevents students from using these funds anywhere else except the on-campus bookstore.

If a student has financial aid dollars, the schools are holding this money at least two weeks to 30 days into the semester. Some schools are offering vouchers, (basically store credit) to those students so that they can make purchases at the campus owned bookstore. Some schools are extending credit to students on a debit card system and will not allow students to use any of these methods to spend their incoming money with off campus, or online retailers.

This forces them to pay higher prices for their books and also costs the state substantially more money for those books as well. This is an outrageously unfair monopoly that has continued far too long and must stop. State law needs to free this money and put it directly into the hands of the recipients.

F. Campus Advertising of student options.

The institutions should be mandated to publicize any of its textbook programs, hours, website address or more. It should also allow off campus bookstores to make this information available to students. This type of information would include options for rental programs, buyback programs, used book programs, digital book programs, freshman orientations and other similar information meant to help students understand all the different choices they may have in trying to lower their personal costs for these materials.

G. Prohibit Kickbacks and royalties for adoptions

Many campus academic departments are cutting deals to earn commissions off of new books being sold by publishers as a result of their adoptions of new and sometimes custom textbooks. This practice is forcing students to buy overpriced new books and is unethical. It should be prohibited. More information on this issue is attached to this packet for your understanding. In many cases these books are custom books. To counteract this behavior and to ensure more used books, all textbook adoptions should have a minimum time of two years in affect before they can be changed.

LETTER FROM THE EXECUTIVE DIRECTOR AT STUDENT SERVICES INC, WEST CHESTER UNIVERSITY. THIS LETTER IS INFORMING US THAT AFTER YEARS OF SHARING TEXTBOOK INFORMATION, THEY UNILATERALLY HAVE DECIDED THEY WILL NO LONGER HONOR THEIR OBLIGATION TO DO SO.

From: Josephs, Mary Ellen [<mailto:MJosephs@wcupa.edu>]
Sent: Wednesday, April 07, 2010 1:21 PM
To: 'Marshall@PennText.com'
Subject: SSI - Letter

Marshall - I called you just a short time ago and learned that you won't be in the office today and are "heading out" to a wedding, returning next week. I wanted to tell you about a letter I am mailing to you today via the U.S. surface mail, in regards to the changes that are being implemented in the SSI bookstore operations and text adoption process, in compliance with the Higher Education Opportunity Act legislation.

Since all information is required to be posted on the web in a timely fashion to create an open market place for students to select courses and purchase text books, SSI will continue to post all textbook information for WCU on the SSI website; a change will be SSI will now include ISBN numbers on the site as well, as received by the WCU faculty. Therefore; SSI will no longer be forwarding the paper adoptions information to you after the July 1, 2010 legislative implementation date since all course information, in detail, will be available on the web for anyone to obtain.

After you read the letter, please drop me a written line with any questions that you might have and I would gladly assist you in understanding the legislation and our changes.

Mell

**ADDITIONAL RESOURCES:
CUSTOM TEXTBOOKS AND ACADEMIC DEPARTMENT KICKBACKS**

<http://www.berkerynoyes.com/pages/as-textbooks-go-custom-students-pay.aspx>

The article above is a must read for all of you. It is very informative and will give you a strong understanding of why you need to address this legislatively.

Many Universities and academic departments work directly with publishers to create custom published books. These custom books typically contain the standard book pages with additional school specific content inserted into the back or front of the book. Sometimes that custom content is even the professor's lecture notes. A custom cover and different ordering ISBN are created. This is an aggressive and sneaky way to force students to buy a book they cannot find discounted or used; and that they cannot sell back at the end of the term.

Publishers love this. They have sales reps that specifically work with departments to create these customized books. It's a tool to thwart Used book sales and it works very effectively. The publishers would prefer you to believe this is in the student's benefit and that it helps the departments to make the best possible books for their students. The majority of the time, there is no additional value added to the actual materials.

In many cases the academic departments are being paid kick backs in quiet back door deals that the students never learn about. This drives up the price of the books, prevents buyback at the end of the semester and angers students and their families beyond belief. (especially when the books are barely even used in classes) This is one of the biggest complaints students have at the end of the semester at the buyback counters.

Penn State University college of Liberal Arts even has policy that enables their departments to receive these kickbacks under the guise of "royalties"

http://www.la.psu.edu/CLA-Deans_Area/RevenueTextbookSales.shtml

Suggestion:

http://www.pittsburghlive.com/x/pittsburghtrib/news/pittsburgh/s_670537.html

This article suggests that University of Pitt encourages departments to keep adoptions for 2 years. This is a great idea and is missing from the bill. If adoptions are kept for longer amounts of time, it allows those books to be available in the used market, driving down prices for students significantly. This is especially true for custom books. Custom books, if adopted should be used for no less than two years. The length of the adoption will become even more critical and necessary if book rental pilots end up being introduced after all.

Students the following semester will enjoy the benefits of buying these custom books at significantly lower prices. Some states have also gone as far as prohibiting the publishers from making these custom

books into single use books unless at least 25% of the book has content that is necessary to fill in, rip out, and/or submit for homework.

The counter argument:

Publishers will argue that the two year limits are too excessive and that the cost of producing these custom books is too expensive . They need the inventory turns. The simple solution then is to just encourage the professors to use the standard copies of the books and stop playing games like this. Anything less than legislating this problem to keep it "in check" will truly be ineffective.