

By: Hochberg

H.B. No. 2488

A BILL TO BE ENTITLED

AN ACT

relating to open-source textbooks for public schools.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 31.002, Education Code, is amended to read as follows:

Sec. 31.002. DEFINITIONS. In this chapter:

(1) "Electronic textbook" means computer software, interactive videodisc, magnetic media, CD-ROM, computer courseware, on-line services, an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including an open-source textbook.

(2) "Open-source textbook" means an electronic textbook that is available for downloading from the Internet at no charge to all students, without requiring the purchase of an unlock code, membership, or any other access or use charge, except for a charge to order an optional printed copy of all or part of the textbook.

(3) [~~(2)~~] "Publisher" includes an on-line service or a developer or distributor of an electronic textbook.

(4) [~~(3)~~] "Textbook" means a book, a system of instructional materials, or a combination of a book and supplementary instructional materials that conveys information to the student or otherwise contributes to the learning process, or an

1 electronic textbook.

2 (5) [~~4~~] "Technological equipment" means hardware, a
3 device, or equipment necessary for:

4 (A) instructional use in the classroom,
5 including to gain access to or enhance the use of an electronic
6 textbook; or

7 (B) professional use by a classroom teacher.

8 SECTION 2. Chapter 31, Education Code, is amended by adding
9 Section 31.0245 to read as follows:

10 Sec. 31.0245. ADOPTION OF OPEN-SOURCE TEXTBOOKS WRITTEN AND
11 PUBLISHED BY INSTITUTIONS OF HIGHER EDUCATION. (a) The State
12 Board of Education shall place an open-source textbook for a
13 secondary level course submitted for adoption by a public or
14 private university located in Texas that spends at least \$75
15 million per year on research as reported to the Texas Higher
16 Education Coordinating Board under section 61.051 (h), or a Texas
17 public technical institute as defined in Section 61.003, on a
18 conforming or nonconforming list, as determined by the
19 university's or institute's certification, if:

20 (1) the open-source textbook is written, compiled or
21 edited primarily by faculty of the university or institute
22 submitting the textbook who specialize in the subject area of the
23 textbook;

24 (2) all contributing authors to the open-source
25 textbook are identified by the university or institute submitting
26 the textbook;

27 (3) the open-source textbook is certified for accuracy

1 by the department of the university or institute that teaches the
2 subject area of the textbook;

3 (4) the university or institute submitting the
4 textbook determines that the textbook qualifies for placement on
5 the either the conforming or nonconforming list, and certifies
6 this to the Board;

7 (5) the university or institute submitting the
8 textbook for a senior year secondary course certifies that a
9 student who successfully completes a course based on the textbook
10 will be prepared, without remediation, for entry into the freshman
11 college course in that subject at that university or institute; and

12 (6) the university or institute submitting the
13 textbook for junior and senior year secondary courses certifies
14 that a student who successfully completes a course based on the
15 junior year textbook will be prepared for entry into the senior
16 year course.

17 (b) This section does not prohibit an educational
18 institution described in this section from submitting textbooks
19 for placement on conforming or nonconforming lists through any
20 other adoption process provided in this chapter.

21 SECTION 3. Section 31.026, Education Code, is amended by
22 adding subsection (d) to read as follows:

23 (d) This section does not apply to an open-source textbook.

24 SECTION 4. Chapter 31, Education Code, is amended by adding
25 Section 31.0265 to read as follows:

26 Sec. 31.0265. CONTRACTS FOR PRINTING OF OPEN-SOURCE
27 TEXTBOOKS. The State Board of Education may execute contracts for

1 the printing of open-source textbooks listed on the conforming and
2 non-conforming lists. The contracts shall allow school districts
3 to requisition printed copies of open-source textbooks as provided
4 in Section 31.103.

5 SECTION 5. Section 31.207, Education Code, is amended by
6 adding subsection (c) to read as follows:

7 (c) This section does not apply to an open-source textbook.

8 SECTION 6. Section 31.103, Education Code, is amended by
9 adding subsection (d) to read as follows:

10 (d) A school district or open-enrollment charter school
11 that selects an open-source textbook shall requisition enough
12 printed copies of the open-source textbook to assure that students
13 who do not have the technological equipment necessary to use the
14 open-source textbook receive a printed copy, unless the district
15 provides for the student to have the necessary equipment at no
16 charge to the student or arranges for the student to receive bound
17 printed copies of portions of the book that will be used for the
18 class.

19 SECTION 7. Section 31.104 is amended by amending
20 subsections (b) and (c), and adding subsection (f) to read as
21 follows:

22 (b) A school district or open-enrollment charter school may
23 order replacements for textbooks that have been lost or damaged
24 directly from:

25 (1) the textbook depository; or

26 (2) the textbook publisher or manufacturer if the
27 textbook publisher or manufacturer does not have a designated

1 textbook depository in this state under Section 31.151(a)(6)(B),
2 except that a printed copy of an open-source textbook may be
3 ordered from any source.

4 (c) Each textbook must state that the textbook is the
5 property of or is licensed to this state, as appropriate. Each
6 textbook, other than an electronic textbook or a printed copy of an
7 open-source textbook, must be covered by the student under the
8 direction of the teacher. A student must return all textbooks to
9 the teacher at the end of the school year or when the student
10 withdraws from school, except that a printed copy of an open-source
11 textbook need not be returned if the school district or
12 open-enrollment charter school does not intend to use the textbook
13 for another student.

14 (f) This section does not apply to the electronic copy of an
15 open-source textbook.

16 SECTION 8. Section 31.151 (a), Education Code, is amended
17 to read as follows:

18 Section. 31.151. DUTIES OF PUBLISHERS AND MANUFACTURERS. (a)
19 A publisher or manufacturer of textbooks:

20 (1) shall furnish any textbook the publisher or
21 manufacturer offers in this state, at a price that does not exceed
22 the lowest price at which the publisher offers that textbook for
23 adoption or sale to any state, public school, or school district in
24 the United States;

25 (2) shall automatically reduce the price of a textbook
26 sold for use in a school district or open-enrollment charter school
27 to the extent that the price is reduced elsewhere in the United

1 States;

2 (3) shall provide any textbook or ancillary item free
3 of charge in this state to the same extent that the publisher or
4 manufacturer provides the textbook or ancillary item free of charge
5 to any state, public school, or school district in the United
6 States;

7 (4) shall guarantee that each copy of a textbook sold
8 in this state is at least equal in quality to copies of that
9 textbook sold elsewhere in the United States and is free from
10 factual error;

11 (5) may not become associated or connected with,
12 directly or indirectly, any combination in restraint of trade in
13 textbooks or enter into any understanding or combination to control
14 prices or restrict competition in the sale of textbooks for use in
15 this state;

16 (6) shall:

17 (A) maintain a depository in this state or
18 arrange with a depository in this state to receive and fill orders
19 for textbooks, other than open-source textbooks, on-line textbooks
20 or on-line textbook components, consistent with State Board of
21 Education rules; or

22 (B) deliver textbooks to a school district or
23 open-enrollment charter school without a delivery charge to the
24 school district, open-enrollment charter school, or state, if:

25 (i) the publisher or manufacturer does not
26 maintain or arrange with a depository in this state under Paragraph
27 (A) and the publisher's or manufacturer's textbooks and related

1 products are warehoused or otherwise stored less than 300 miles
2 from a border of this state; or

3 (ii) the textbooks are open-source
4 textbooks, on-line textbooks or on-line textbook components;

5 (7) shall, at the time an order for textbooks is
6 acknowledged, provide to school districts or open-enrollment
7 charter schools an accurate shipping date for textbooks that are
8 back-ordered;

9 (8) shall guarantee delivery of textbooks at least 10
10 business days before the opening day of school of the year for which
11 the textbooks are ordered if the textbooks are ordered by a date
12 specified in the sales contract; and

13 (9) shall submit to the State Board of Education an
14 affidavit certifying any textbook the publisher or manufacturer
15 offers in this state to be free of factual errors at the time the
16 publisher executes the contract required by Section 31.026.

17 SECTION 9. This Act takes effect September 1, 2009.