

# HOUSE BILL 1297

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HB 872/10 – APP

2lr2827

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By: **Delegates Howard, Alston, and Vaughn**  
Introduced and read first time: February 15, 2012  
Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Higher Education – Private Career Schools – Financial Guarantee**  
3 **Requirements**

4 FOR the purpose of requiring certain private career schools to maintain certain  
5 financial guarantees under certain circumstances; requiring the financial  
6 guarantees to be in certain forms and in certain amounts; providing for the  
7 effective date of certain provisions of this Act; providing for the termination of  
8 certain provisions of this Act; and generally relating to financial guarantee  
9 requirements at private career schools.

10 BY repealing and reenacting, with amendments,  
11 Article – Education  
12 Section 11–203  
13 Annotated Code of Maryland  
14 (2008 Replacement Volume and 2011 Supplement)

15 BY repealing and reenacting, with amendments,  
16 Article – Education  
17 Section 11–203  
18 Annotated Code of Maryland  
19 (2008 Replacement Volume and 2011 Supplement)  
20 (As enacted by Chapter 277 of the Acts of the General Assembly of 2011)

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

23 **Article – Education**

24 11–203.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) The Commission may require any institution of postsecondary education  
2 that is required to obtain a certificate of approval to furnish a performance bond or  
3 other form of financial guarantee to the State conditioned that the institution will:

4 (1) Perform faithfully all agreements or contracts it makes with its  
5 students; and

6 (2) Comply with this article.

7 (b) Subject to [subsection (d)(3)(ii)2] **SUBSECTIONS (C) AND (E)(3)(II)2** of  
8 this section, any bond or guarantee required under this section shall be in the form  
9 and amount the Secretary requires.

10 **(C) (1) IN ADDITION TO THE GUARANTY FUND AUTHORIZED IN**  
11 **SUBSECTION (E) OF THIS SECTION, THE SECRETARY MAY REQUIRE A FINANCIAL**  
12 **GUARANTEE FOR A PRIVATE CAREER SCHOOL IN ACCORDANCE WITH THIS**  
13 **SUBSECTION.**

14 **(2) (I) A PRIVATE CAREER SCHOOL THAT IS SEEKING AN**  
15 **INITIAL CERTIFICATE OF APPROVAL SHALL MAINTAIN A FINANCIAL GUARANTEE**  
16 **FOR 5 YEARS.**

17 **(II) THE FINANCIAL GUARANTEE SHALL BE:**

18 **1. IN THE FORM OF A PERFORMANCE BOND OR A**  
19 **LETTER OF CREDIT; AND**

20 **2. IN AN AMOUNT THAT IS SUFFICIENT TO PROTECT**  
21 **100% OF THE TUITION LIABILITY OF THE MAXIMUM STUDENT ENROLLMENT OF**  
22 **THE SCHOOL, UP TO A MAXIMUM OF \$300,000, UNLESS THE SECRETARY**  
23 **DETERMINES THAT A LESSER PERCENTAGE IS SUFFICIENT BASED ON THE**  
24 **FINANCIAL CONDITION OF THE SCHOOL AS REFLECTED IN AN AUDITED**  
25 **FINANCIAL STATEMENT.**

26 **(3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**  
27 **PARAGRAPH, A PRIVATE CAREER SCHOOL THAT HAS HAD A CERTIFICATE OF**  
28 **APPROVAL FOR MORE THAN 5 YEARS MAY NOT BE REQUIRED TO HAVE A**  
29 **FINANCIAL GUARANTEE.**

30 **(II) THE SECRETARY MAY REQUIRE A PRIVATE CAREER**  
31 **SCHOOL TO MAINTAIN A FINANCIAL GUARANTEE IF THE SECRETARY**  
32 **DETERMINES THAT THE SCHOOL DOES NOT:**

1                   **1. MEET THE UNITED STATES DEPARTMENT OF**  
2 **EDUCATION FINANCIAL CRITERIA REQUIRED TO PARTICIPATE IN FEDERAL**  
3 **FINANCIAL AID PROGRAMS; OR**

4                   **2. MEET A ONE-TO-ONE RATIO OF LIABILITIES TO**  
5 **ASSETS BASED ON REVIEWED FINANCIAL STATEMENTS.**

6                   **(III) IF THE SECRETARY DETERMINES THAT A FINANCIAL**  
7 **GUARANTEE IS REQUIRED, THE GUARANTEE SHALL BE:**

8                   **1. IN THE FORM OF A PERFORMANCE BOND OR A**  
9 **LETTER OF CREDIT; AND**

10                   **2. IN AN AMOUNT THAT IS SUFFICIENT TO PROTECT**  
11 **30% OF THE TUITION LIABILITY OF ENROLLED STUDENTS, UP TO A MAXIMUM OF**  
12 **\$300,000.**

13                   **(4) A PRIVATE CAREER SCHOOL THAT OFFERS PROGRAMS BY**  
14 **DISTANCE EDUCATION SHALL MAINTAIN A FINANCIAL GUARANTEE FOR EACH**  
15 **DISTANCE EDUCATION PROGRAM THAT IS:**

16                   **(I) IN THE FORM OF A PERFORMANCE BOND OR A LETTER**  
17 **OF CREDIT; AND**

18                   **(II) IN AN AMOUNT THAT IS SUFFICIENT TO PROTECT 100%**  
19 **OF THE TUITION LIABILITY OF STUDENTS ENROLLED IN THE DISTANCE**  
20 **EDUCATION PROGRAM, UP TO A MAXIMUM OF \$300,000.**

21                   **[(c)] (D) (1) The total liability of a surety on a bond or guarantee under**  
22 **this section may not exceed the amount of the bond or guarantee.**

23                   **(2) If the total amount of claims filed against a bond or guarantee**  
24 **exceeds the amount of the bond or guarantee, the surety shall pay the amount of the**  
25 **bond or guarantee to the Secretary for distribution to the claimants.**

26                   **[(d)] (E) (1) By rule and regulation, the Commission may create and**  
27 **provide for the operation of two separate guaranty funds for:**

28                   **(i) For-profit institutions of higher education; and**

29                   **(ii) Private career schools.**

30                   **(2) (i) The private career school fund shall be used:**

1                   1.     To reimburse any student at a private career school  
2 who is entitled to a refund of tuition and fees because the institution has failed to  
3 perform faithfully any agreement or contract with the student or failed to comply with  
4 any provision of this article; or

5                   2.     For any other function directly related to the original  
6 purpose of the fund deemed appropriate by the Secretary.

7                   (ii)    The for-profit institution of higher education fund shall be  
8 used to reimburse any student at a for-profit institution of higher education who is  
9 entitled to a refund of tuition and fees because the institution has failed to perform  
10 faithfully any agreement or contract with the student or failed to comply with any  
11 provision of this article.

12                  (iii)  1.     The funds shall be continuing, nonlapsing funds, not  
13 subject to § 7-302 of the State Finance and Procurement Article.

14                  2.     Any unspent portions of the funds may not be  
15 transferred or revert to the General Fund of the State, but shall remain in the funds to  
16 be used for the purposes specified in this subsection.

17                  3.     No other State money may be used to support the  
18 funds.

19                  (iv)   The Commission shall be subrogated to and may enforce the  
20 claim of any student to the extent of any actual or authorized reimbursement from the  
21 funds.

22                  (3)   (i)    Each for-profit institution of higher education or private  
23 career school that is required to obtain a certificate of approval shall pay an annual fee  
24 into the appropriate fund.

25                  (ii)   1.     Subject to subsubparagraph 2 of this subparagraph,  
26 the Commission shall determine the amount of the fee based on the probable amount  
27 of money needed for the funds for each fiscal year. If the moneys in the guaranty funds  
28 are insufficient to satisfy duly authorized claims, the participating institutions may be  
29 reassessed and shall pay the additional amounts required.

30                  2.     The amount of the annual fee charged to a for-profit  
31 institution of higher education may not exceed 0.0025 of all gross tuition, or \$30,000,  
32 whichever is less.

33                  (iii)   The Commission may not issue a certificate of approval to,  
34 and shall revoke any certificate of approval previously issued to, an institution that  
35 fails to pay any annual fee or reassessment.

1 (iv) The Commission shall deposit into the appropriate fund any  
2 penalty assessed against a for-profit institution of higher education or private career  
3 school, respectively, under the terms of § 11-204 of this subtitle.

4 (4) (i) The funds shall be maintained by the State Comptroller who  
5 may deposit the assets of the funds in any manner that is consistent with the purposes  
6 of the funds.

7 (ii) All interest or other return on fund investments shall be  
8 credited to the funds.

9 (5) The Commission, through the Attorney General, may enforce any  
10 claim to which the Commission has been subrogated under this subsection.

11 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
12 read as follows:

13 **Article – Education**

14 11-203.

15 (a) The Commission may require any institution of postsecondary education  
16 that is required to obtain a certificate of approval to furnish a performance bond or  
17 other form of financial guarantee to the State conditioned that the institution will:

18 (1) Perform faithfully all agreements or contracts it makes with its  
19 students; and

20 (2) Comply with this article.

21 (b) [Any] **SUBJECT TO SUBSECTION (C) OF THIS SECTION, ANY** bond or  
22 guarantee required under this section shall be in the form and amount the Secretary  
23 requires.

24 **(C) (1) IN ADDITION TO THE GUARANTY FUND AUTHORIZED IN**  
25 **SUBSECTION (E) OF THIS SECTION, THE SECRETARY MAY REQUIRE A FINANCIAL**  
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5 **THE SCHOOL, UP TO A MAXIMUM OF \$300,000, UNLESS THE SECRETARY**  
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4           **[(c)] (D)**     (1)    The total liability of a surety on a bond or guarantee under  
5 this section may not exceed the amount of the bond or guarantee.

6                   (2)    If the total amount of claims filed against a bond or guarantee  
7 exceeds the amount of the bond or guarantee, the surety shall pay the amount of the  
8 bond or guarantee to the Secretary for distribution to the claimants.

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17 any provision of this article; or

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19 purpose of the fund deemed appropriate by the Secretary.

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21 used to reimburse any student at a for-profit institution of higher education who is  
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16 may deposit the assets of the funds in any manner that is consistent with the purposes  
17 of the funds.

18                  (ii)   All interest or other return on fund investments shall be  
19 credited to the funds.

20                  (5)   The Commission, through the Attorney General, may enforce any  
21 claim to which the Commission has been subrogated under this subsection.

22                  SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall  
23 take effect on the taking effect of the termination provision specified in Section 5 of  
24 Chapter 277 of the Acts of the General Assembly of 2011. If that termination  
25 provision takes effect, Section 1 of this Act shall be abrogated and of no further force  
26 and effect. This Act may not be interpreted to have any effect on that termination  
27 provision.

28                  SECTION 4. AND BE IT FURTHER ENACTED, That, subject to the provisions  
29 of Section 3 of this Act, this Act shall take effect October 1, 2012.