

SENATE BILL 510

F2

(3lr1581)

ENROLLED BILL

— *Education, Health, and Environmental Affairs/Appropriations* —

Introduced by **Senator Pinsky**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Institutions of Higher Education – Fully Online Distance Education**
3 **Programs – Regulation**

4 FOR the purpose of altering the type of institution that is required to register with the
5 Maryland Higher Education Commission before enrolling certain students in
6 certain fully online distance education programs; prohibiting certain
7 institutions of higher education from commencing or continuing to enroll certain
8 students without registering with the Maryland Higher Education Commission;
9 prohibiting certain institutions from receiving a registration from the
10 Commission; requiring the Commission to give certain notice to certain
11 institutions under certain circumstances within a certain period of time;
12 providing certain institutions a certain right to judicial review; authorizing
13 certain institutions to enroll certain students without a registration; requiring
14 certain institutions to submit certain financial statements and prohibiting
15 certain institutions from commencing to operate, do business, or function unless

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 the Commission makes a certain determination; requiring certain institutions
 2 to file a certain application with the Commission before enrolling certain
 3 students; exempting certain institutions from the requirement to register with
 4 the Commission; authorizing certain institutions to continue to operate without
 5 a registration under certain circumstances; requiring certain institutions to be
 6 accredited, submit certain information to the Commission, notify the
 7 Commission of certain changes, comply with certain principles of good practice,
 8 make public and publish certain information on the institution's Web site,
 9 comply with a certain refund policy and procedures, and be subject to certain
 10 complaint investigation; ~~altering a certain refund policy and procedure;~~
 11 ~~prohibiting certain institutions from enrolling certain students unless the~~
 12 ~~institution gives certain notice to certain students of the institution's refund~~
 13 ~~policy for certain students and obtains a certain acknowledgment from certain~~
 14 ~~students that the students have received and understand a certain refund~~
 15 ~~policy;~~ requiring the Commission to make public and post on its Web site the
 16 names of certain institutions under certain circumstances; altering the contents
 17 of a certain report; requiring the Commission to peruse certain databases and
 18 certain information sources to make certain determinations during a certain
 19 period of time; altering the scope and use of a certain guaranty fund; altering
 20 the type of student on behalf of whom a certain claim can be made against a
 21 certain fund; requiring certain institutions to pay a certain fee into a certain
 22 fund; requiring the Commission to deposit certain penalties into certain funds;
 23 authorizing the Commission to impose a certain penalty on certain institutions
 24 under certain circumstances; requiring the Commission to deposit certain
 25 monetary penalties into a certain fund; subjecting certain institutions to
 26 revocation of registration under certain circumstances; altering the length of
 27 time before which certain institutions will be subject to a certain fine;
 28 prohibiting certain institutions from enrolling certain students under certain
 29 circumstances; requiring certain institutions to submit certain data to the
 30 Maryland Longitudinal Data System; making certain stylistic changes; defining
 31 certain terms; and generally relating to the regulation of institutions of higher
 32 education that offer fully online distance education programs.

33 BY repealing and reenacting, with amendments,

34 Article – Education

35 Section 11–202(a)(2) and (3), (c–1)(1), and (d)(1), 11–202.1(b) and (c), ~~11–202.2~~

36 11–202.2(a), (b), (c), (f), and (g), 11–203(a), (d)(1)(iii), (2)(iii), and (3)(i) and

37 (iv), 11–204(c)(2) and (d)(1) and (3), and 24–707(c)

38 Annotated Code of Maryland

39 (2008 Replacement Volume and 2012 Supplement)

40 BY adding to

41 Article – Education

42 Section 11–202.3

43 Annotated Code of Maryland

44 (2008 Replacement Volume and 2012 Supplement)

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

3 **Article – Education**

4 11–202.

5 (a) (2) Except as provided in [§ 11–202.2] **§§ 11–202.1 AND 11–202.2** of
6 this subtitle, an institution of [postsecondary] **HIGHER** education that enrolls
7 Maryland students in a fully online distance education program in the State may not
8 commence or continue [to operate, do business, or function] **ENROLLMENT OF**
9 **MARYLAND STUDENTS** without registering with the Commission [within 6 months of
10 enrolling the first Maryland student] **AS PROVIDED UNDER § 11–202.2 OF THIS**
11 **SUBTITLE.**

12 (3) [Except as provided in § 11–202.1 of this subtitle, but
13 notwithstanding any other provision of law, an institution] **AN INSTITUTION**
14 **REQUIRED TO REGISTER UNDER PARAGRAPH (2) OF THIS SUBSECTION** that is
15 not accredited by an accrediting body recognized and approved by the United States
16 Department of Education may not [commence or continue to operate, do business, or
17 function in the State] **RECEIVE A REGISTRATION FROM THE COMMISSION.**

18 (c–1) (1) If the Commission believes that an institution of [postsecondary]
19 **HIGHER** education that is required to register under **SUBSECTION (A)(2) OF THIS**
20 **SECTION OR § 11–202.2** of this subtitle does not meet the conditions or standards
21 necessary for the issuance of the registration, the Commission shall give the
22 institution written notice of the specific deficiencies within 6 months after receipt of an
23 application for registration.

24 (d) (1) Any institution of postsecondary education that is denied a
25 certificate of approval by the Commission after a hearing granted under subsection (c)
26 of this section or **ANY INSTITUTION OF HIGHER EDUCATION** that is denied a
27 registration after a hearing granted under subsection (c–1) of this section has the right
28 to judicial review provided by Title 10, Subtitle 2 of the State Government Article.

29 11–202.1.

30 (b) Subject to the requirements imposed by subsection (c) of this section, the
31 following institutions of postsecondary education may operate without a certificate of
32 approval from the Commission **AND MAY ENROLL MARYLAND STUDENTS IN A**
33 **FULLY ONLINE DISTANCE EDUCATION PROGRAM IN THE STATE WITHOUT A**
34 **REGISTRATION FROM THE COMMISSION:**

35 (1) A religious educational institution that certifies, in accordance
36 with procedures established by the Commission, that the institution:

1 (i) Is founded and operated by a church or other religious
2 institution or organization of churches or religious institutions as an integral part of
3 the religious ministry of that institution or organization;

4 (ii) Offers sectarian instruction only designed for and aimed at
5 persons who hold or seek to learn particular religious faiths or beliefs of religious
6 institutions or religious organizations, and provides only educational programs for
7 religious vocations; and

8 (iii) States on the certificate or diploma the religious nature of
9 the award; and

10 (2) A church or other religious institution offering a postsecondary
11 instructional program leading to a certificate or diploma only if designed for and
12 aimed at persons who hold or seek to learn the particular religious faith or beliefs of
13 that church or religious institution, and providing only educational programs for
14 religious purposes.

15 (c) (1) Each institution authorized to operate without a certificate of
16 approval **OR WITHOUT A REGISTRATION** under subsection (b) of this section:

17 (i) Shall submit to the Commission, every 2 years, a financial
18 statement reviewed by an independent accountant retained by the institution; and

19 (ii) May not commence or continue to operate, do business, or
20 function unless the Commission determines on the basis of the financial statement
21 submitted by the institution that the institution possesses adequate financial
22 resources to support the institution's educational program.

23 (2) The Commission shall adopt regulations establishing procedures
24 and standards for the submission and evaluation of the reports and financial
25 statements submitted by institutions under this subsection.

26 11-202.2.

27 (a) (1) In this subtitle the following words have the meanings indicated.

28 (2) "Distance education" means course work taught by an institution
29 of [postsecondary] **HIGHER** education through electronic distribution of instruction to
30 a site other than the principal location of the institution and advertised or described as
31 leading to the formal award of a certificate or degree.

32 (3) "Fully online distance education program in the State" means a
33 program in which:

1 (i) 100% of the program is offered through electronic
2 distribution of instruction to one or more sites other than the principal location of an
3 institution; or

4 (ii) 51% or more of the program is offered through electronic
5 distribution of instruction to one or more sites other than the principal location of an
6 institution and the Commission has determined that the portion of the program
7 offered at a location in the State, if any, does not require a certificate of approval for
8 the institution to operate, do business, or function in the State.

9 (b) (1) [Except as provided in paragraphs (2) and (3) of this subsection,
10 an] **AN** institution of [postsecondary] **HIGHER** education that enrolls Maryland
11 students in a fully online distance education program in the State shall file an
12 application to register with the Commission **BEFORE OR** within 3 months of
13 [enrollment] **ENROLLING THE FIRST MARYLAND STUDENT**.

14 (2) This section does not apply to an institution of [postsecondary]
15 **HIGHER** education that enrolls Maryland students in a fully online distance education
16 program in the State that:

17 (I) [has been approved or received a favorable recommendation]
18 **IS SUBJECT TO PROGRAM REVIEW** by the Commission under § 11–206 or § 11–206.1
19 of this subtitle; **OR**

20 (II) **PARTICIPATES IN THE SOUTHERN REGIONAL**
21 **EDUCATION BOARD’S ELECTRONIC CAMPUS**.

22 (3) (i) [Notwithstanding the requirements of § 11–202(c–1) of this
23 subtitle, an] **AFTER FILING AN APPLICATION UNDER PARAGRAPH (1) OF THIS**
24 **SUBSECTION, AN** institution that has enrolled A Maryland [students] **STUDENT**
25 before obtaining A registration under this section may continue to operate without a
26 registration while the Commission considers the institution’s application, conducts a
27 hearing concerning the institution’s application, or participates in judicial review
28 regarding an institution’s application.

29 (ii) An institution that continues to operate without a
30 registration under subparagraph (i) of this paragraph shall furnish a performance
31 bond or other form of financial guarantee to the State in an amount set by regulation
32 that is in addition to and separate from a performance bond or other form of financial
33 guarantee required under § 11–203 of this subtitle.

34 (c) Each institution **OF HIGHER EDUCATION** required to register under
35 [subsection (b) of] this section shall:

1 (1) Be accredited by an accrediting body recognized and approved by
2 the United States Department of Education;

3 (2) Submit to the Commission:

4 (i) Every 2 years, a financial statement reviewed by an
5 independent accountant retained by the institution;

6 (ii) An affidavit from the president or chief executive officer of
7 the institution affirming:

8 1. That the institution has not filed for bankruptcy
9 protection under Title 11 of the United States Code during its existence; and

10 2. The willingness of the president or the chief executive
11 officer to abide by the provisions of this section;

12 (iii) Proof of good business standing in the state in which the
13 central administration of the institution is incorporated; and

14 (iv) Proof of good academic standing submitted by:

15 1. The regulatory higher education entity in the state in
16 which the central administration of the institution is located; or

17 2. If the state in which the institution is located does not
18 have a regulatory higher education entity, the accrediting body that accredited the
19 institution;

20 (3) Promptly notify the Commission of a change in ownership or a
21 change in majority control;

22 (4) Comply with the Principles of Good Practice for distance education
23 established by the Commission through regulation;

24 (5) Make public and post on the institution's Web site:

25 (i) Whether the institution is registered in Maryland; and

26 (ii) The process by which to make complaints against the
27 institution;

28 (6) Comply with the refund policy and procedures established by the
29 Commission; and

30 (7) Be subject to complaint investigation by the Office of the Attorney
31 General or the Commission or both.

1 ~~(d) The refund policy and procedures established by the Commission shall~~
2 ~~[allow for] PERMIT:~~

3 ~~(1) (i) At least 2 weeks of required orientation or preenrollment~~
4 ~~instruction in a fully online distance education program in the State at no charge for a~~
5 ~~student who has completed less than 24 credits of college level learning from an~~
6 ~~accredited institution; and~~

7 ~~(ii) [A prorated refund methodology that provides a refund to~~
8 ~~any] FOR A student not covered by item (i) of this paragraph WHO HAS COMPLETED~~
9 ~~UP TO:~~

10 ~~1. ONE WEEK OF A COURSE, TERM, OR PROGRAM~~
11 ~~WITHIN THE APPLICABLE BILLING PERIOD, 100% REFUND; AND~~

12 ~~2. [who has completed 60% or less] 25% of a course,~~
13 ~~term, or program within the applicable billing period, A REFUND METHODOLOGY~~
14 ~~THAT PROVIDES A REFUND IN AN AMOUNT DETERMINED BY THE COMMISSION~~
15 ~~AND ESTABLISHED BY REGULATION; or~~

16 ~~(2) FOR A STUDENT WHO HAS COMPLETED UP TO:~~

17 ~~(i) ONE WEEK OF A COURSE, TERM, OR PROGRAM WITHIN~~
18 ~~THE APPLICABLE BILLING PERIOD, 100% REFUND; AND~~

19 ~~(ii) [A prorated refund methodology that provides a refund to~~
20 ~~any student who has completed 60% or less of a course, term, or program within the~~
21 ~~applicable billing period] 25% OF A COURSE, TERM, OR PROGRAM WITHIN THE~~
22 ~~APPLICABLE BILLING PERIOD, A REFUND METHODOLOGY THAT PROVIDES A~~
23 ~~REFUND IN AN AMOUNT DETERMINED BY THE COMMISSION AND ESTABLISHED~~
24 ~~BY REGULATION.~~

25 ~~(E) AN INSTITUTION OF HIGHER EDUCATION MAY NOT ENROLL A~~
26 ~~MARYLAND STUDENT UNLESS, BEFORE ENROLLMENT, THE INSTITUTION:~~

27 ~~(1) GIVES WRITTEN NOTICE TO THE STUDENT OF THE~~
28 ~~INSTITUTION'S REFUND POLICY FOR MARYLAND STUDENTS; AND~~

29 ~~(2) OBTAINS A WRITTEN ACKNOWLEDGMENT FROM THE STUDENT~~
30 ~~THAT THE STUDENT HAS RECEIVED AND UNDERSTANDS THE REFUND POLICY.~~

31 ~~[(c)] (F) (1) Subject to paragraph (2) of this subsection, the Commission~~
32 ~~shall require the payment of a fee set by regulation, as a condition of registration.~~

1 ~~(2) The fees charged shall be:~~

2 ~~(i) A fixed amount for all institutions regardless of type,~~
3 ~~location, or student enrollment; and~~

4 ~~(ii) Set to cover the approximate cost of implementing a system~~
5 ~~of registration.~~

6 **~~(f)~~ (e)** The Commission shall make public and post on its Web site:

7 (1) A list of registered institutions of [postsecondary] **HIGHER**
8 education that offer fully online distance education programs in the State; and

9 (2) If the Commission denies or revokes the registration of an
10 institution, the name of the denied or revoked institution.

11 **~~(g)~~ (h)** On or before December 1 each year, the Commission shall report to
12 the Governor and, in accordance with § 2-1246 of the State Government Article, the
13 General Assembly:

14 (1) The number of institutions of [postsecondary] **HIGHER** education
15 that apply for registration under this section;

16 (2) The type and size of the institutions that apply;

17 (3) The number of institutions approved for registration;

18 (4) The number of institutions denied registration; [and]

19 (5) The number of Maryland students enrolled in institutions required
20 to register under this section;

21 **(6) THE RESULTS OF THE REQUIREMENTS OF § 11-202.3 OF THIS**
22 **SUBTITLE;**

23 **(7) THE NUMBER OF INSTITUTIONS FOUND TO BE IN VIOLATION**
24 **OF THE REQUIREMENT TO REGISTER UNDER THIS SECTION;**

25 **(8) ANY FINES IMPOSED, AND IN WHAT AMOUNTS, ON**
26 **INSTITUTIONS THAT VIOLATE THIS SECTION; AND**

27 **(9) ANY FINE REVENUES COLLECTED FROM INSTITUTIONS FOR**
28 **VIOLATION OF THIS SECTION.**

29 **11-202.3.**

1 **AT LEAST ~~BIANNUALLY~~ TWICE A YEAR, THE COMMISSION SHALL PERUSE**
2 **FEDERAL DATABASES AND OTHER INFORMATION SOURCES TO DETERMINE**
3 **WHETHER THERE ARE MARYLAND STUDENTS WHO ARE ENROLLED IN A FULLY**
4 **ONLINE DISTANCE EDUCATION PROGRAM OFFERED BY AN INSTITUTION OF**
5 **HIGHER EDUCATION THAT IS REQUIRED TO REGISTER WITH THE COMMISSION**
6 **UNDER § 11-202.2 OF THIS SUBTITLE, BUT THAT HAS FAILED TO REGISTER WITH**
7 **THE COMMISSION.**

8 11-203.

9 (a) The Commission may require any institution of postsecondary education
10 that is required to obtain a certificate of approval or **AN INSTITUTION OF HIGHER**
11 **EDUCATION THAT IS** required to register under § 11-202.2 of this subtitle to furnish
12 a performance bond or other form of financial guarantee for either the certificate of
13 approval or the registration to the State conditioned that the institution will:

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

16 (2) Comply with this article.

17 (d) (1) By rule and regulation, the Commission may create and provide for
18 the operation of three separate guaranty funds for:

19 (iii) Institutions of [postsecondary] **HIGHER** education that are
20 required to register under § 11-202.2 of this subtitle.

21 (2) (iii) 1. The fund for institutions of [postsecondary] **HIGHER**
22 education that are required to register under § 11-202.2 of this subtitle shall be used
23 to reimburse any student at any of these institutions who is entitled to a refund of
24 tuition and fees because the institution has failed to perform faithfully any agreement
25 or contract with the student or failed to comply with any provision of this article.

26 2. A. After 3 years of claims history during which no
27 claim against the fund has been sustained on behalf of a **MARYLAND** student
28 participating in a fully online distance education program offered in the State by an
29 institution registered under § 11-202.2 of this subtitle, the Commission shall exempt
30 that institution from the requirement to contribute to the fund.

31 B. Notwithstanding subsusubparagraph A of this
32 subsusubparagraph, an institution shall be required to contribute to the fund following a
33 claim against the fund being sustained on behalf of a **MARYLAND** student
34 participating in a fully online distance education program offered in the State by the
35 institution.

1 3. Notwithstanding subparagraph 2 of this
2 subparagraph, a student who takes courses from an institution exempted from
3 contribution to the fund under subparagraph 2 of this subparagraph may make a
4 claim against the fund in accordance with subparagraph 1 of this subparagraph.

5 (3) (i) Each for-profit institution of higher education or private
6 career school that is required to obtain a certificate of approval and, subject to
7 paragraph (2)(iii)2 of this subsection, each institution of [postsecondary] **HIGHER**
8 education required to register under § 11-202.2 of this subtitle shall pay an annual fee
9 into the appropriate fund.

10 (iv) The Commission shall deposit into the appropriate fund any
11 penalty assessed against a for-profit institution of higher education, institution of
12 [postsecondary] **HIGHER** education required to register under § 11-202.2 of this
13 subtitle, or private career school, respectively, under the terms of § 11-204 of this
14 subtitle.

15 11-204.

16 (c) (2) (i) Instead of or in addition to reprimanding a for-profit
17 institution of higher education, institution of [postsecondary] **HIGHER** education
18 required to register under § 11-202.2 of this subtitle, or private career school, or
19 suspending or revoking any approval issued to a for-profit institution of higher
20 education or private career school or registration issued to an institution of
21 [postsecondary] **HIGHER** education under § 11-202.2 of this subtitle, the Commission
22 may impose a penalty of up to \$5,000 for each violation as specified in regulations
23 adopted by the Commission.

24 (ii) In accordance with the provisions of this section, the
25 Commission shall deposit any penalty assessed against a for-profit institution of
26 higher education, institution of [postsecondary] **HIGHER** education required to
27 register under § 11-202.2 of this subtitle, or private career school into the respective
28 guaranty fund if such funds exist. Otherwise, all penalties shall be deposited into the
29 General Fund of the State.

30 (d) (1) In addition to any other sanction imposed under this section, an
31 institution of [postsecondary] **HIGHER** education that is required to register under §
32 11-202.2 of this subtitle that willfully and knowingly violates the provisions of this
33 subtitle shall be:

34 (i) Subject to revocation of registration; and

35 (ii) Prohibited from enrolling Maryland students in fully online
36 distance education programs in the State.

1 (3) If an institution is required to register under § 11–202.2 of this
2 subtitle and the institution does not **FILE AN APPLICATION TO** register with the
3 Commission within ~~[6]~~ **3** months of enrolling its first Maryland student or the
4 institution enrolls additional Maryland students in violation of this section, the
5 institution shall be subject to a fine not exceeding \$20,000.

6 24–707.

7 (c) For–profit and private nonprofit institutions of higher education, and
8 institutions of ~~[postsecondary]~~ **HIGHER** education that are required to register under
9 § 11–202.2 of this article shall transfer student–level enrollment data, degree data,
10 and financial aid data for all Maryland residents to the Maryland Longitudinal Data
11 System in accordance with the data security and safeguarding plan developed under §
12 24–704(g)(6) of this subtitle.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 ~~October~~ July 1, 2013.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.