

# SENATE BILL 510

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3lr1581

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By: **Senator Pinsky**

Introduced and read first time: January 31, 2013

Assigned to: Education, Health, and Environmental Affairs

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 17, 2013

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## 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  
16 the Commission makes a certain determination; requiring certain institutions  
17 to file a certain application with the Commission before enrolling certain  
18 students; exempting certain institutions from the requirement to register with  
19 the Commission; authorizing certain institutions to continue to operate without  
20 a registration under certain circumstances; requiring certain institutions to be  
21 accredited, submit certain information to the Commission, notify the  
22 Commission of certain changes, comply with certain principles of good practice,  
23 make public and publish certain information on the institution's Web site,  
24 comply with a certain refund policy and procedures, and be subject to certain  
25 complaint investigation; altering a certain refund policy and procedure;

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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.



1 prohibiting certain institutions from enrolling certain students unless the  
 2 institution gives certain notice to certain students of the institution's refund  
 3 policy for certain students and obtains a certain acknowledgment from certain  
 4 students that the students have received and understand a certain refund  
 5 policy; requiring the Commission to make public and post on its Web site the  
 6 names of certain institutions under certain circumstances; altering the contents  
 7 of a certain report; requiring the Commission to peruse certain databases and  
 8 certain information sources to make certain determinations during a certain  
 9 period of time; altering the scope and use of a certain guaranty fund; altering  
 10 the type of student on behalf of whom a certain claim can be made against a  
 11 certain fund; requiring certain institutions to pay a certain fee into a certain  
 12 fund; requiring the Commission to deposit certain penalties into certain funds;  
 13 authorizing the Commission to impose a certain penalty on certain institutions  
 14 under certain circumstances; requiring the Commission to deposit certain  
 15 monetary penalties into a certain fund; subjecting certain institutions to  
 16 revocation of registration under certain circumstances; altering the length of  
 17 time before which certain institutions will be subject to a certain fine;  
 18 prohibiting certain institutions from enrolling certain students under certain  
 19 circumstances; requiring certain institutions to submit certain data to the  
 20 Maryland Longitudinal Data System; making certain stylistic changes; defining  
 21 certain terms; and generally relating to the regulation of institutions of higher  
 22 education that offer fully online distance education programs.

23 BY repealing and reenacting, with amendments,  
 24 Article – Education  
 25 Section 11–202(a)(2) and (3), (c–1)(1), and (d)(1), 11–202.1(b) and (c), 11–202.2,  
 26 11–203(a), (d)(1)(iii), (2)(iii), and (3)(i) and (iv), 11–204(c)(2) and (d)(1) and  
 27 (3), and 24–707(c)  
 28 Annotated Code of Maryland  
 29 (2008 Replacement Volume and 2012 Supplement)

30 BY adding to  
 31 Article – Education  
 32 Section 11–202.3  
 33 Annotated Code of Maryland  
 34 (2008 Replacement Volume and 2012 Supplement)

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

37 **Article – Education**

38 11–202.

39 (a) (2) Except as provided in [§ 11–202.2] §§ 11–202.1 AND 11–202.2 of  
 40 this subtitle, an institution of [postsecondary] HIGHER education that enrolls  
 41 Maryland students in a fully online distance education program in the State may not

1 commence or continue [to operate, do business, or function] **ENROLLMENT OF**  
2 **MARYLAND STUDENTS** without registering with the Commission [within 6 months of  
3 enrolling the first Maryland student] **AS PROVIDED UNDER § 11-202.2 OF THIS**  
4 **SUBTITLE.**

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

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

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

22 11-202.1.

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

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

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

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

1 (iii) States on the certificate or diploma the religious nature of  
2 the award; and

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

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

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

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

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

19 11-202.2.

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

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

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

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

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

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

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

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

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

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

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

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

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

30                           (2) Submit to the Commission:

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

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

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

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

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

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

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

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

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

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

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

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

19                                   (ii)   The process by which to make complaints against the  
20 institution;

21                                  (6)   Comply with the refund policy and procedures established by the  
22 Commission; and

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

25                                  (d)   The refund policy and procedures established by the Commission shall  
26 **[allow for] PERMIT:**

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

1 (ii) [A prorated refund methodology that provides a refund to  
2 any] **FOR A student not covered by item (i) of this paragraph WHO HAS COMPLETED**  
3 **UP TO:**

4 **1. ONE WEEK OF A COURSE, TERM, OR PROGRAM**  
5 **WITHIN THE APPLICABLE BILLING PERIOD, 100% REFUND; AND**

6 **2. [who has completed 60% or less] 25% of a course,**  
7 **term, or program within the applicable billing period, A REFUND METHODOLOGY**  
8 **THAT PROVIDES A REFUND IN AN AMOUNT DETERMINED BY THE COMMISSION**  
9 **AND ESTABLISHED BY REGULATION; or**

10 **(2) FOR A STUDENT WHO HAS COMPLETED UP TO:**

11 **(I) ONE WEEK OF A COURSE, TERM, OR PROGRAM WITHIN**  
12 **THE APPLICABLE BILLING PERIOD, 100% REFUND; AND**

13 **(II) [A prorated refund methodology that provides a refund to**  
14 **any student who has completed 60% or less of a course, term, or program within the**  
15 **applicable billing period] 25% OF A COURSE, TERM, OR PROGRAM WITHIN THE**  
16 **APPLICABLE BILLING PERIOD, A REFUND METHODOLOGY THAT PROVIDES A**  
17 **REFUND IN AN AMOUNT DETERMINED BY THE COMMISSION AND ESTABLISHED**  
18 **BY REGULATION.**

19 **(E) AN INSTITUTION OF HIGHER EDUCATION MAY NOT ENROLL A**  
20 **MARYLAND STUDENT UNLESS, BEFORE ENROLLMENT, THE INSTITUTION:**

21 **(1) GIVES WRITTEN NOTICE TO THE STUDENT OF THE**  
22 **INSTITUTION'S REFUND POLICY FOR MARYLAND STUDENTS; AND**

23 **(2) OBTAINS A WRITTEN ACKNOWLEDGMENT FROM THE STUDENT**  
24 **THAT THE STUDENT HAS RECEIVED AND UNDERSTANDS THE REFUND POLICY.**

25 **[(e)] (F) (1) Subject to paragraph (2) of this subsection, the Commission**  
26 **shall require the payment of a fee set by regulation, as a condition of registration.**

27 **(2) The fees charged shall be:**

28 **(i) A fixed amount for all institutions regardless of type,**  
29 **location, or student enrollment; and**

30 **(ii) Set to cover the approximate cost of implementing a system**  
31 **of registration.**

1           **[(f)] (G)**       The Commission shall make public and post on its Web site:

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

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

6           **[(g)] (H)**       On or before December 1 each year, the Commission shall report to  
7 the Governor and, in accordance with § 2–1246 of the State Government Article, the  
8 General Assembly:

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

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

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

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

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

16                  **(6)    THE RESULTS OF THE REQUIREMENTS OF § 11–202.3 OF THIS**  
17 **SUBTITLE;**

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

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

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

24 **11–202.3.**

25           **AT LEAST ~~BIANNUALLY~~ TWICE A YEAR, THE COMMISSION SHALL PERUSE**  
26 **FEDERAL DATABASES AND OTHER INFORMATION SOURCES TO DETERMINE**  
27 **WHETHER THERE ARE MARYLAND STUDENTS WHO ARE ENROLLED IN A FULLY**  
28 **ONLINE DISTANCE EDUCATION PROGRAM OFFERED BY AN INSTITUTION OF**  
29 **HIGHER EDUCATION THAT IS REQUIRED TO REGISTER WITH THE COMMISSION**  
30 **UNDER § 11–202.2 OF THIS SUBTITLE, BUT THAT HAS FAILED TO REGISTER WITH**  
31 **THE COMMISSION.**



1 11-203.

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

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

9 (2) Comply with this article.

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

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

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

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

24 B. Notwithstanding subs subparagraph A of this  
25 subs subparagraph, an institution shall be required to contribute to the fund following a  
26 claim against the fund being sustained on behalf of a **MARYLAND** student  
27 participating in a fully online distance education program offered in the State by the  
28 institution.

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

33 (3) (i) Each for-profit institution of higher education or private  
34 career school that is required to obtain a certificate of approval and, subject to  
35 paragraph (2)(iii)2 of this subsection, each institution of [postsecondary] **HIGHER**

1 education required to register under § 11–202.2 of this subtitle shall pay an annual fee  
2 into the appropriate fund.

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

8 11–204.

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

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

23 (d) (1) In addition to any other sanction imposed under this section, an  
24 institution of [postsecondary] **HIGHER** education that is required to register under §  
25 11–202.2 of this subtitle that willfully and knowingly violates the provisions of this  
26 subtitle shall be:

27 (i) Subject to revocation of registration; and

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

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

35 24–707.

1 (c) For-profit and private nonprofit institutions of higher education, and  
2 institutions of [postsecondary] **HIGHER** education that are required to register under  
3 § 11-202.2 of this article shall transfer student-level enrollment data, degree data,  
4 and financial aid data for all Maryland residents to the Maryland Longitudinal Data  
5 System in accordance with the data security and safeguarding plan developed under §  
6 24-704(g)(6) of this subtitle.

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.