
By: Chairman, Commerce and Government Matters Committee (Departmental - Dept. Business & Economic Dev. and University of Maryland System)

Introduced and read first time: January 22, 1996

Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Higher Education - Research and Development Activities**

3 FOR the purpose of altering provisions of law relating to the conflict of interest standards
4 applicable to officials and employees within public senior higher education
5 institutions who are engaged in certain research and development activities;
6 broadening the application of the exemption from certain ethics laws; altering the
7 standards for the adoption of certain policies and procedures; and generally relating
8 to the exemption under certain circumstances of certain individuals from provisions
9 of the Ethics Law.

10 BY adding to

11 Article - Education
12 Section 15-107
13 Annotated Code of Maryland
14 (1992 Replacement Volume and 1995 Supplement)

15 BY repealing and reenacting, with amendments,

16 Article - State Government
17 Section 15-523
18 Annotated Code of Maryland
19 (1995 Replacement Volume)

20 Preamble

21 WHEREAS, Newly adopted federal regulations require institutions participating
22 in federally funded research to adopt certain procedures for the prevention and/or
23 management of conflicts of interest; and

24 WHEREAS, Maryland economic development requires that the State's public
25 higher education institutions be strongly encouraged to bring the results of their basic and
26 applied research to bear in the design, development, production, and marketing of new
27 and improved products, services, and processes; and

28 WHEREAS, This process will involve institutional initiatives such as
29 industry-sponsored research, incubator programs, technology licensing agreements,

2

1 research parks, institutional and employee ownership of equity in start-up companies,
2 technical assistance and continuing education programs, and other forms of cooperative
3 economic development efforts; and

4 WHEREAS, These mechanisms often require working relationships between
5 these institutions, their faculty, and their administrators, and private sector industries,
6 which may be inconsistent with the strict application of provisions in the Maryland Public
7 Ethics Law; and

8 WHEREAS, The experience at other public and private institutions of higher
9 education has shown that these relationships can be effectively managed to protect the
10 institutions and the public from damaging conflicts of interest; now, therefore,

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

13 **Article - Education**

14 15-107.

15 PUBLIC SENIOR HIGHER EDUCATION INSTITUTIONS AND THEIR GOVERNING
16 BOARDS AND ENCOURAGED TO PROMOTE THE ECONOMIC DEVELOPMENT OF THE
17 STATE AND TO INCREASE THE FINANCIAL RESOURCES OF THE INSTITUTIONS
18 THROUGH ARRANGEMENTS WITH THE PRIVATE SECTOR, INCLUDING
19 COLLABORATIVE RESEARCH AND DEVELOPMENT, COMMERCIAL APPLICATION OF
20 INSTITUTION-OWNED INTELLECTUAL PROPERTY, AND THE PROVISIONS OF
21 TECHNICAL ASSISTANCE.

22 **Article - State Government**

23 15-523.

24 (a) (1) In this section the following words have the meanings indicated.

25 (2) "[Faculty conflict] CONFLICT of interest policies" means policies
26 adopted by a governing board and approved:

27 (i) by the Office of the Attorney General; and

28 (ii) as to conformity with this section, by the Ethics Commission.

29 (3) "Governing board" has the meaning provided in § 10-101 of the
30 Education Article.

31 (4) "Educational institution" means:

32 (I) a public senior higher education institution as defined in § 10-101
33 of the Education Article;

34 (II) A CENTER OR INSTITUTE OF THE UNIVERSITY OF MARYLAND
35 SYSTEM THAT IS DESIGNATED IN THE CONFLICT OF INTEREST POLICIES ADOPTED
36 BY THE SYSTEM'S BOARD OF REGENTS; OR

3

1 (III) THE UNIVERSITY OF MARYLAND SYSTEM ADMINISTRATION,
2 FOR WHICH THE CHANCELLOR OF THE SYSTEM SHALL BE CONSIDERED THE
3 PRESIDENT FOR PURPOSES OF THIS SECTION.

4 (5) "Relationship" includes any:

- 5 (i) interest;
- 6 (ii) service;
- 7 (iii) employment;
- 8 (iv) gift; or
- 9 (v) other benefit or relationship.

10 (6) (i) "[Sponsored research] RESEARCH or development" means
11 [activities engaged in pursuant to an agreement by an entity to engage in] basic or
12 applied research or development [at an educational institution].

13 (ii) "[Sponsored research] RESEARCH or development" includes:

14 1. the [transfer] DEVELOPMENT OR MARKETING of
15 university-owned technology[, or];

16 2. the [provision] ACQUISITION of services [by a faculty
17 member] OF AN OFFICIAL OR EMPLOYEE, [to] BY an entity for [the] RESEARCH
18 AND DEVELOPMENT purposes [specified in subparagraph (i) of this paragraph]; OR

19 3. PARTICIPATION IN STATE ECONOMIC DEVELOPMENT
20 PROGRAMS.

21 (b) (1) Each educational institution engaged in [sponsored] research or
22 development shall develop [faculty] conflict of interest procedures based on:

23 (i) [the faculty] conflict of interest policies developed by its
24 governing board; and

25 (ii) the purposes of this title specified in § 15-101 of this title.

26 (2) Before they may become effective, the procedures AND POLICIES
27 developed under this subsection shall be approved by:

28 (i) the Office of the Attorney General; and

29 (ii) as to conformity with this section, the Ethics Commission.

30 (c) The procedures adopted by an educational institution under subsection (b)(2)
31 of this section shall [include]:

32 [(1) disclosure requirements, to the extent required of an official subject to
33 Subtitle 6 of this title, as to any relationship between:

34 (i) a faculty member; and

4

1 (ii) 1. the entity engaged in the sponsored research or
2 development; or

3 2. any entity having a direct interest in the outcome of the
4 sponsored research or development;

5 (2) other restrictions designed to prevent a substantial conflict with a faculty
6 member's duties to the educational institution while encouraging commercialization of
7 university-owned technology; and

8 (3) guidelines to ensure that sponsored research or development does not
9 give improper advantage to an entity because of its affiliation or involvement with a
10 faculty member.]

11 (1) REQUIRE DISCLOSURE OF ANY INTEREST IN OR EMPLOYMENT BY
12 OR OTHER RELATIONSHIP WITH AN ENTITY FOR WHICH AN EXEMPTION UNDER
13 THIS SECTION IS CLAIMED, ON A FORM FILED WITH THE ETHICS COMMISSION AND
14 MAINTAINED AS A PUBLIC RECORD AT THE EDUCATIONAL INSTITUTION;

15 (2) REQUIRE REVIEW OF ALL DISCLOSURES BY A DESIGNATED
16 OFFICIAL, WHO SHALL DETERMINE WHAT FURTHER INFORMATION MUST BE
17 DISCLOSED AND WHAT RESTRICTIONS SHALL BE IMPOSED BY THE EDUCATIONAL
18 INSTITUTION TO MANAGE, REDUCE, OR ELIMINATE ANY ACTUAL OR POTENTIAL
19 CONFLICT OF INTEREST;

20 (3) INCLUDE GUIDELINES TO ENSURE THAT INTERESTS AND
21 EMPLOYMENT FOR WHICH AN EXEMPTION UNDER THIS SECTION IS CLAIMED DO
22 NOT IMPROPERLY GIVE AN ADVANTAGE TO ENTITIES IN WHICH THE INTERESTS OR
23 EMPLOYMENT ARE MAINTAINED, LEAD TO MISUSE OF INSTITUTION STUDENTS OR
24 EMPLOYEES FOR THE BENEFIT OF ENTITIES IN WHICH THE INTERESTS OR
25 EMPLOYMENT ARE MAINTAINED, OR OTHERWISE INTERFERE WITH THE DUTIES
26 AND RESPONSIBILITIES OF THE EXEMPT OFFICIAL OR EMPLOYEE;

27 (4) REQUIRE APPROVAL BY THE PRESIDENT OF THE EDUCATIONAL
28 INSTITUTION OF ANY INTEREST OR EMPLOYMENT FOR WHICH AN EXEMPTION IS
29 CLAIMED UNDER THIS SECTION; AND

30 (5) REQUIRE APPROVAL BY THE GOVERNING BOARD OF THE
31 EDUCATIONAL INSTITUTION IF AN EXEMPTION IS CLAIMED BY THE PRESIDENT OF
32 THE EDUCATIONAL INSTITUTION.

33 (D) POLICIES AND PROCEDURES ADOPTED PURSUANT TO THIS SECTION MAY
34 PROVIDE FOR PERIODIC CONSULTATION WITH THE DEPARTMENT OF BUSINESS AND
35 ECONOMIC DEVELOPMENT AND WITH FEDERAL AGENCIES THAT HAVE IMPOSED
36 REGULATORY REQUIREMENTS ON FEDERALLY FUNDED RESEARCH, CONCERNING
37 THE IMPLEMENTATION OF THIS SECTION.

38 [(d) (1)] (E) Except as provided in subsection [(e)] (F) of this section, [a
39 faculty member] A PRESENT OR FORMER OFFICIAL OR EMPLOYEE at an educational
40 institution may have a relationship, otherwise prohibited by this subtitle, with an entity
41 engaged in [sponsored] research or development, or with an entity having a direct
42 interest in the outcome of [sponsored] research or development, only if[:] THE

5

1 EDUCATIONAL INSTITUTION HAS ADOPTED POLICIES AND PROCEDURES IN
2 ACCORDANCE WITH THIS SECTION, AND THE OFFICIAL OR EMPLOYEE HAS
3 COMPLIED WITH THE POLICIES AND PROCEDURES.

4 (i) the relationship to the entity is disclosed publicly on a form
5 approved by and filed with the Ethics Commission, a copy of which shall be maintained as
6 a public record by the educational institution; and

7 (ii) in accordance with the institution's faculty conflict of interest
8 procedures and the governing board's faculty conflict of interest policies, the president of
9 the educational institution approves the relationship.

10 (2) If the provisions [of paragraph (1)] of this subsection are not met, the
11 [faculty member] OFFICIAL OR EMPLOYEE is not exempt from any relevant provisions
12 of this subtitle.

13 [(e) (1) This section does not exempt a faculty member from:

14 (i) the requirements of §§ 15-504(a), 15-505, and 15-506 of this
15 subtitle; or

16 (ii) any requirement of this subtitle as to activities not related to
17 sponsored research or development.

18 (2) A relationship may not be approved if the faculty member has
19 substantial policy or management responsibility within the educational institution for the
20 sponsored research or development.]

21 (F) (1) THIS SECTION DOES NOT EXEMPT AN OFFICIAL OR EMPLOYEE AT
22 AN EDUCATIONAL INSTITUTION FROM THE PROVISIONS OF § 15-505 OF THIS
23 SUBTITLE.

24 (2) AN OFFICIAL OR EMPLOYEE AT AN EDUCATIONAL INSTITUTION
25 MAY NOT:

26 (I) REPRESENT A PARTY FOR CONTINGENT COMPENSATION IN
27 ANY MATTER BEFORE THE INSTITUTION'S GOVERNING BOARD OR BEFORE THE
28 BOARD OF PUBLIC WORKS; OR

29 (II) INTENTIONALLY MISUSE THE INDIVIDUAL'S STATE POSITION
30 FOR THE INDIVIDUAL'S PERSONAL GAIN OR FOR THE GAIN OF ANOTHER PERSON.

31 (G) EACH GOVERNING BOARD SHALL REPORT ANNUALLY TO THE
32 GOVERNOR THE NUMBER OF APPROVALS GRANTED UNDER SUBSECTION (C) OF
33 THIS SECTION AND HOW THE CONFLICT OF INTEREST POLICIES AND PROCEDURES
34 ADOPTED PURSUANT TO THIS SECTION HAVE BEEN IMPLEMENTED IN THE
35 PRECEDING YEAR.

36 (H) THIS SECTION MAY BE CITED AS THE "PUBLIC-PRIVATE PARTNERSHIP
37 ACT".

38 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
39 July 1, 1996.

