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**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

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 29, 1996

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CHAPTER \_\_\_\_

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; requiring the  
8 governing board of an educational institution to provide written notice to the Ethics  
9 Commission of certain exemptions granted to certain officials; requiring the Ethics  
10 Commission to review certain exemptions and advise the Governor and the  
11 Legislative Policy Committee of the General Assembly regarding the exemptions;  
12 and generally relating to the exemption under certain circumstances of certain  
13 individuals from provisions of the Ethics Law.

14 BY adding to

15 Article - Education  
16 Section 15-107  
17 Annotated Code of Maryland  
18 (1992 Replacement Volume and 1995 Supplement)

19 BY repealing and reenacting, with amendments,

20 Article - State Government  
21 Section 15-523  
22 Annotated Code of Maryland  
23 (1995 Replacement Volume)

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1 Preamble

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

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

9 WHEREAS, This process will involve institutional initiatives such as  
10 industry-sponsored research, incubator programs, technology licensing agreements,  
11 research parks, institutional and employee ownership of equity in start-up companies,  
12 technical assistance and continuing education programs, and other forms of cooperative  
13 economic development efforts; and

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

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

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 15-107.

25 PUBLIC SENIOR HIGHER ~~EDUCATION~~ EDUCATIONAL INSTITUTIONS AND THEIR  
26 GOVERNING BOARDS ~~AND~~ ARE ENCOURAGED TO PROMOTE THE ECONOMIC  
27 DEVELOPMENT OF THE STATE AND TO INCREASE THE FINANCIAL RESOURCES OF  
28 THE INSTITUTIONS THROUGH ARRANGEMENTS WITH THE PRIVATE SECTOR,  
29 INCLUDING COLLABORATIVE RESEARCH AND DEVELOPMENT, COMMERCIAL  
30 APPLICATION OF INSTITUTION-OWNED INTELLECTUAL PROPERTY, AND THE  
31 PROVISIONS OF TECHNICAL ASSISTANCE.

32 **Article - State Government**

33 15-523.

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

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

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

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

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

3 (4) "Educational institution" means:

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

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

9 (III) THE UNIVERSITY OF MARYLAND SYSTEM ADMINISTRATION,  
10 FOR WHICH THE CHANCELLOR OF THE SYSTEM SHALL BE CONSIDERED THE  
11 PRESIDENT FOR PURPOSES OF THIS SECTION.

12 (5) "Relationship" includes any:

13 (i) interest;

14 (ii) service;

15 (iii) employment;

16 (iv) gift; or

17 (v) other benefit or relationship.

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

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

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

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

27 3. PARTICIPATION IN STATE ECONOMIC DEVELOPMENT  
28 PROGRAMS.

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

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

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

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

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

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

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

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

6 (i) a faculty member; and

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

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

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

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

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

21 (2) REQUIRE REVIEW OF ALL DISCLOSURES BY A DESIGNATED  
22 OFFICIAL, WHO SHALL DETERMINE WHAT FURTHER INFORMATION MUST BE  
23 DISCLOSED AND WHAT RESTRICTIONS SHALL BE IMPOSED BY THE EDUCATIONAL  
24 INSTITUTION TO MANAGE, REDUCE, OR ELIMINATE ANY ACTUAL OR POTENTIAL  
25 CONFLICT OF INTEREST;

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

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

36 (5) REQUIRE APPROVAL BY THE GOVERNING BOARD OF THE  
37 EDUCATIONAL INSTITUTION IF AN EXEMPTION IS CLAIMED BY THE PRESIDENT OF  
38 THE EDUCATIONAL INSTITUTION.

39 (D) POLICIES AND PROCEDURES ADOPTED PURSUANT TO THIS SECTION MAY  
40 PROVIDE FOR PERIODIC CONSULTATION WITH THE DEPARTMENT OF BUSINESS AND

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1 ECONOMIC DEVELOPMENT AND WITH FEDERAL AGENCIES THAT HAVE IMPOSED  
2 REGULATORY REQUIREMENTS ON FEDERALLY FUNDED RESEARCH, CONCERNING  
3 THE IMPLEMENTATION OF THIS SECTION.

4 [(d) (1)] (E) Except as provided in subsection [(e)] (F) of this section, [a  
5 faculty member] A PRESENT OR FORMER OFFICIAL OR EMPLOYEE at an educational  
6 institution may have a relationship, otherwise prohibited by this subtitle, with an entity  
7 engaged in [sponsored] research or development, or with an entity having a direct  
8 interest in the outcome of [sponsored] research or development, only if[:] THE  
9 EDUCATIONAL INSTITUTION HAS ADOPTED POLICIES AND PROCEDURES IN  
10 ACCORDANCE WITH THIS SECTION, AND THE OFFICIAL OR EMPLOYEE HAS  
11 COMPLIED WITH THE POLICIES AND PROCEDURES.

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

15 [(ii) in accordance with the institution's faculty conflict of interest  
16 procedures and the governing board's faculty conflict of interest policies, the president of  
17 the educational institution approves the relationship.

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

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

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

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

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

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

32 (2) AN OFFICIAL OR EMPLOYEE AT AN EDUCATIONAL INSTITUTION  
33 MAY NOT:

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

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

39 (G) EACH GOVERNING BOARD SHALL REPORT ANNUALLY TO THE  
40 GOVERNOR THE NUMBER OF APPROVALS GRANTED UNDER SUBSECTION (C) OF

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1 THIS SECTION AND HOW THE CONFLICT OF INTEREST POLICIES AND PROCEDURES  
2 ADOPTED PURSUANT TO THIS SECTION HAVE BEEN IMPLEMENTED IN THE  
3 PRECEDING YEAR.

4 (H) (1) THIS SUBSECTION APPLIES TO AN OFFICIAL WHO IS A CHANCELLOR,  
5 VICE-CHANCELLOR, PRESIDENT, OR VICE-PRESIDENT, OR TO AN INDIVIDUAL WHO  
6 HOLDS A SIMILAR SUCH POSITION, AT A PUBLIC SENIOR HIGHER EDUCATIONAL  
7 INSTITUTION IN THE STATE.

8 (2) AN OFFICIAL SUBJECT TO THIS SUBSECTION MAY NOT RECEIVE AN  
9 EXEMPTION UNDER THIS SECTION UNLESS THE GOVERNING BOARD OF THE  
10 EDUCATIONAL INSTITUTION FINDS:

11 (I) THAT PARTICIPATION BY, AND THE FINANCIAL INTEREST OR  
12 EMPLOYMENT OF, THE OFFICIAL IS NECESSARY TO THE SUCCESS OF THE RESEARCH  
13 OR DEVELOPMENT ACTIVITY; AND

14 (II) THAT THE CONFLICT OF INTEREST CAN BE MANAGED  
15 CONSISTENT WITH THE PURPOSES OF THIS SECTION AND OTHER RELEVANT  
16 PROVISIONS OF THIS TITLE.

17 (3) THE GOVERNING BOARD OF AN EDUCATIONAL INSTITUTION SHALL  
18 NOTIFY THE ETHICS COMMISSION IN WRITING OF ANY EXEMPTION THAT IS  
19 GRANTED UNDER THIS SECTION TO AN OFFICIAL SUBJECT TO THIS SUBSECTION.

20 (4) (I) IF THE ETHICS COMMISSION DISAGREES WITH AN EXEMPTION  
21 THAT IS GRANTED BY THE GOVERNING BOARD OF AN EDUCATIONAL INSTITUTION  
22 TO AN OFFICIAL WHO IS SUBJECT TO THIS SUBSECTION, WITHIN 30 DAYS AFTER  
23 RECEIPT OF THE NOTICE UNDER PARAGRAPH (3) OF THIS SUBSECTION THE ETHICS  
24 COMMISSION SHALL NOTIFY THE GOVERNING BOARD OF THE REASON FOR ITS  
25 CONCERN AND ATTEMPT TO RESOLVE THE DISAGREEMENT.

26 (II) IF THE ETHICS COMMISSION AND THE GOVERNING BOARD OF  
27 THE EDUCATIONAL INSTITUTION ARE UNABLE TO RESOLVE THE DISAGREEMENT,  
28 THE ETHICS COMMISSION SHALL ADVISE THE GOVERNOR AND THE LEGISLATIVE  
29 POLICY COMMITTEE OF THE GENERAL ASSEMBLY IN WRITING OF THE BASIS FOR ITS  
30 CONCERN.

31 ~~(H)~~ (I) THIS SECTION MAY BE CITED AS THE "PUBLIC-PRIVATE  
32 PARTNERSHIP ACT".

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

