

## Chapter 490

(Senate Bill 510)

AN ACT concerning

### **Institutions of Higher Education – Fully Online Distance Education Programs – Regulation**

FOR the purpose of altering the type of institution that is required to register with the Maryland Higher Education Commission before enrolling certain students in certain fully online distance education programs; prohibiting certain institutions of higher education from commencing or continuing to enroll certain students without registering with the Maryland Higher Education Commission; prohibiting certain institutions from receiving a registration from the Commission; requiring the Commission to give certain notice to certain institutions under certain circumstances within a certain period of time; providing certain institutions a certain right to judicial review; authorizing certain institutions to enroll certain students without a registration; requiring certain institutions to submit certain financial statements and prohibiting certain institutions from commencing to operate, do business, or function unless the Commission makes a certain determination; requiring certain institutions to file a certain application with the Commission before enrolling certain students; exempting certain institutions from the requirement to register with the Commission; authorizing certain institutions to continue to operate without a registration under certain circumstances; requiring certain institutions to be accredited, submit certain information to the Commission, notify the Commission of certain changes, comply with certain principles of good practice, make public and publish certain information on the institution's Web site, comply with a certain refund policy and procedures, and be subject to certain complaint investigation; ~~altering a certain refund policy and procedure; prohibiting certain institutions from enrolling certain students unless the institution gives certain notice to certain students of the institution's refund policy for certain students and obtains a certain acknowledgment from certain students that the students have received and understand a certain refund policy;~~ requiring the Commission to make public and post on its Web site the names of certain institutions under certain circumstances; altering the contents of a certain report; requiring the Commission to peruse certain databases and certain information sources to make certain determinations during a certain period of time; altering the scope and use of a certain guaranty fund; altering the type of student on behalf of whom a certain claim can be made against a certain fund; requiring certain institutions to pay a certain fee into a certain fund; requiring the Commission to deposit certain penalties into certain funds; authorizing the Commission to impose a certain penalty on certain institutions under certain circumstances; requiring the Commission to deposit certain

monetary penalties into a certain fund; subjecting certain institutions to revocation of registration under certain circumstances; altering the length of time before which certain institutions will be subject to a certain fine; prohibiting certain institutions from enrolling certain students under certain circumstances; requiring certain institutions to submit certain data to the Maryland Longitudinal Data System; making certain stylistic changes; defining certain terms; and generally relating to the regulation of institutions of higher education that offer fully online distance education programs.

BY repealing and reenacting, with amendments,

Article – Education

Section 11–202(a)(2) and (3), (c–1)(1), and (d)(1), 11–202.1(b) and (c), ~~11–202.2~~  
11–202.2(a), (b), (c), (f), and (g), 11–203(a), (d)(1)(iii), (2)(iii), and (3)(i) and  
(iv), 11–204(c)(2) and (d)(1) and (3), and 24–707(c)

Annotated Code of Maryland

(2008 Replacement Volume and 2012 Supplement)

BY adding to

Article – Education

Section 11–202.3

Annotated Code of Maryland

(2008 Replacement Volume and 2012 Supplement)

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

### Article – Education

11–202.

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

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

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

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

11-202.1.

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

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

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

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

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

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

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

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

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

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

11-202.2.

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

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

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

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

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

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

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

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

**(II) PARTICIPATES IN THE SOUTHERN REGIONAL EDUCATION BOARD'S ELECTRONIC CAMPUS.**

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

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

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

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

(2) Submit to the Commission:

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

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

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

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

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

(iv) Proof of good academic standing submitted by:

1. The regulatory higher education entity in the state in which the central administration of the institution is located; or
2. If the state in which the institution is located does not have a regulatory higher education entity, the accrediting body that accredited the institution;
  - (3) Promptly notify the Commission of a change in ownership or a change in majority control;
  - (4) Comply with the Principles of Good Practice for distance education established by the Commission through regulation;
  - (5) Make public and post on the institution's Web site:
    - (i) Whether the institution is registered in Maryland; and
    - (ii) The process by which to make complaints against the institution;
  - (6) Comply with the refund policy and procedures established by the Commission; and
  - (7) Be subject to complaint investigation by the Office of the Attorney General or the Commission or both.

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

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

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

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

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

~~(2) FOR A STUDENT WHO HAS COMPLETED UP TO:~~~~(I) ONE WEEK OF A COURSE, TERM, OR PROGRAM WITHIN THE APPLICABLE BILLING PERIOD, 100% REFUND; AND~~~~(II) [A prorated refund methodology that provides a refund to any student who has completed 60% or less of a course, term, or program within the applicable billing period] 25% OF A COURSE, TERM, OR PROGRAM WITHIN THE APPLICABLE BILLING PERIOD, A REFUND METHODOLOGY THAT PROVIDES A REFUND IN AN AMOUNT DETERMINED BY THE COMMISSION AND ESTABLISHED BY REGULATION.~~~~(E) AN INSTITUTION OF HIGHER EDUCATION MAY NOT ENROLL A MARYLAND STUDENT UNLESS, BEFORE ENROLLMENT, THE INSTITUTION:~~~~(1) GIVES WRITTEN NOTICE TO THE STUDENT OF THE INSTITUTION'S REFUND POLICY FOR MARYLAND STUDENTS; AND~~~~(2) OBTAINS A WRITTEN ACKNOWLEDGMENT FROM THE STUDENT THAT THE STUDENT HAS RECEIVED AND UNDERSTANDS THE REFUND POLICY.~~~~[(c)] (F) (1) Subject to paragraph (2) of this subsection, the Commission shall require the payment of a fee set by regulation, as a condition of registration.~~~~(2) The fees charged shall be:~~~~(i) A fixed amount for all institutions regardless of type, location, or student enrollment; and~~~~(ii) Set to cover the approximate cost of implementing a system of registration.~~~~[(f)] (G) The Commission shall make public and post on its Web site:~~~~(1) A list of registered institutions of [postsecondary] HIGHER education that offer fully online distance education programs in the State; and~~~~(2) If the Commission denies or revokes the registration of an institution, the name of the denied or revoked institution.~~~~[(g)] (H) On or before December 1 each year, the Commission shall report to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly:~~

- (1) The number of institutions of [postsecondary] **HIGHER** education that apply for registration under this section;
- (2) The type and size of the institutions that apply;
- (3) The number of institutions approved for registration;
- (4) The number of institutions denied registration; [and]
- (5) The number of Maryland students enrolled in institutions required to register under this section;
- (6) THE RESULTS OF THE REQUIREMENTS OF § 11-202.3 OF THIS SUBTITLE;**
- (7) THE NUMBER OF INSTITUTIONS FOUND TO BE IN VIOLATION OF THE REQUIREMENT TO REGISTER UNDER THIS SECTION;**
- (8) ANY FINES IMPOSED, AND IN WHAT AMOUNTS, ON INSTITUTIONS THAT VIOLATE THIS SECTION; AND**
- (9) ANY FINE REVENUES COLLECTED FROM INSTITUTIONS FOR VIOLATION OF THIS SECTION.**

**11-202.3.**

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

**11-203.**

- (a) The Commission may require any institution of postsecondary education that is required to obtain a certificate of approval or **AN INSTITUTION OF HIGHER EDUCATION THAT IS** required to register under § 11-202.2 of this subtitle to furnish a performance bond or other form of financial guarantee for either the certificate of approval or the registration to the State conditioned that the institution will:
  - (1) Perform faithfully all agreements or contracts it makes with its students; and

(2) Comply with this article.

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

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

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

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

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

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

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

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

11–204.

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

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

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

(i) Subject to revocation of registration; and

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

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

24-707.

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

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

**Approved by the Governor, May 16, 2013.**