

HOUSE BILL 741

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6lr3167
CF SB 427

By: **Delegates Stein and Kaiser**

Introduced and read first time: February 5, 2016

Assigned to: Appropriations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 29, 2016

CHAPTER _____

1 AN ACT concerning

2 **Higher Education – Institutions of Postsecondary Education – Consumer**
3 **Protection Provisions**

4 FOR the purpose of prohibiting certain private career schools and certain for-profit
5 institutions of higher education from enrolling certain students in certain programs
6 under certain circumstances; requiring the Maryland Higher Education Commission
7 to create certain guaranty funds; specifying the uses of certain guaranty funds;
8 ~~including a certain occurrence as grounds for reimbursement of certain students~~
9 ~~from certain guaranty funds~~; requiring certain students to follow certain complaint
10 procedures of certain institutions before making a claim to certain guaranty funds;
11 authorizing certain students to make a certain claim to certain guaranty funds under
12 certain circumstances; requiring a certain report to include certain information;
13 requiring certain institutions of postsecondary education to ensure that a net price
14 calculator is posted on its Web site in a certain location; requiring certain institutions
15 to provide certain information to certain students under certain circumstances;
16 providing for the application of a certain provision of this Act; and generally relating
17 to consumer protection provisions that impact institutions of postsecondary
18 education.

19 BY adding to
20 Article – Commercial Law
21 Section 13–320
22 Annotated Code of Maryland
23 (2013 Replacement Volume and 2015 Supplement)

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 BY repealing and reenacting, without amendments,
 2 Article – Education
 3 Section 10–101(i) and (j)
 4 Annotated Code of Maryland
 5 (2014 Replacement Volume and 2015 Supplement)

6 BY repealing and reenacting, with amendments,
 7 Article – Education
 8 Section 11–203(d) and (e) and 15–118
 9 Annotated Code of Maryland
 10 (2014 Replacement Volume and 2015 Supplement)

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

13 **Article – Commercial Law**

14 **13–320.**

15 **A PRIVATE CAREER SCHOOL OR FOR-PROFIT INSTITUTION OF HIGHER**
 16 **EDUCATION, AS DEFINED UNDER § ~~10–101(j)~~ 10–101 OF THE EDUCATION ARTICLE,**
 17 **MAY NOT ENROLL A STUDENT IN A PROGRAM THAT IS INTENDED TO LEAD TO**
 18 **EMPLOYMENT IN A FIELD THAT REQUIRES LICENSURE OR CERTIFICATION IN THE**
 19 **STATE IF:**

20 **(1) SUCCESSFUL COMPLETION OF THE EDUCATIONAL COURSE**
 21 **OFFERINGS IN THE PROGRAM AT THE PRIVATE CAREER SCHOOL OR FOR-PROFIT**
 22 **INSTITUTION OF HIGHER EDUCATION WILL NOT MEET THE STATE EDUCATIONAL**
 23 **REQUIREMENTS FOR LICENSURE OR CERTIFICATION;**

24 **~~(2) THE PRIVATE CAREER SCHOOL DOES NOT HOLD THE~~**
 25 **~~APPROPRIATE ACCREDITATION RECOGNIZED BY THE LICENSING ENTITY OF THE~~**
 26 **~~STATE; OR~~**

27 **(2) THE STATE ENTITY THAT LICENSES OR CERTIFIES INDIVIDUALS**
 28 **IN THE FIELD REQUIRES AS A CONDITION OF LICENSURE OR CERTIFICATION THAT**
 29 **THE PRIVATE CAREER SCHOOL OR FOR-PROFIT INSTITUTION OF HIGHER**
 30 **EDUCATION ATTENDED BY THE INDIVIDUAL SATISFIES A STATUTORY OR**
 31 **REGULATORY REQUIREMENT, AND THE SCHOOL DOES NOT SATISFY THE**
 32 **REQUIREMENT; OR**

33 **(3) THE PRIVATE CAREER SCHOOL OR FOR-PROFIT INSTITUTION OF**
 34 **HIGHER EDUCATION IS AWARE OR REASONABLY SHOULD HAVE BEEN AWARE OF ANY**
 35 **OTHER ~~CHARACTERISTICS OF THE STUDENT OR OF THE PROGRAM~~ FACTORS THAT**

1 ~~WOULD~~ MAY LEAD TO THE INELIGIBILITY OF THE STUDENT TO ~~SEEK~~ PURSU OR
 2 OBTAIN LICENSURE OR CERTIFICATION IN THE STATE.

3 **Article – Education**

4 10–101.

5 (i) (1) “Institution of postsecondary education” means a school or other
 6 institution that offers an educational program in the State for individuals who are at least
 7 16 years old and who have graduated from or left elementary or secondary school.

8 (2) “Institution of postsecondary education” does not include:

9 (i) Any adult education, evening high school, or high school
 10 equivalence program conducted by a public school system of the State; or

11 (ii) Any apprenticeship or on–the–job training program subject to
 12 approval by the Apprenticeship and Training Council.

13 (j) “Private career school” means a privately owned and privately operated
 14 institution of postsecondary education other than an institution of higher education that
 15 furnishes or offers to furnish programs, whether or not requiring a payment of tuition or
 16 fee, for the purpose of training, retraining, or upgrading individuals for gainful employment
 17 as skilled or semiskilled workers or technicians in recognized occupations or in new and
 18 emerging occupations.

19 11–203.

20 (d) (1) By [rule and] regulation, the Commission [may]:

21 (I) **SHALL** create and provide for the operation of [three] **TWO**
 22 separate guaranty funds for:

23 [(i)] **1.** For–profit institutions of higher education; **AND**

24 [(ii)] **2.** Private career schools; and

25 [(iii)] **(II)** [Institutions] **MAY CREATE AND PROVIDE FOR THE**
 26 **OPERATION OF A GUARANTY FUND FOR INSTITUTIONS** of higher education that are
 27 required to register under § 11–202.2 of this subtitle.

28 ~~(2) (i) [The] SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION,~~
 29 ~~THE private career school fund shall be used:~~

30 ~~1. To [reimburse] PROVIDE A FULL REIMBURSEMENT TO~~
 31 ~~any student at a private career school 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, INCLUDING CLOSURE OF THE SCHOOL, or failed to comply with any provision of this article; or~~

~~2. For any other function directly related to the original purpose of the fund deemed appropriate by the Secretary.~~

~~(ii) [The] SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, THE for-profit institution of higher education fund shall be used to [reimburse] PROVIDE A FULL REIMBURSEMENT TO any student at a for-profit institution of higher education 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, INCLUDING CLOSURE OF THE SCHOOL, or failed to comply with any provision of this article.~~

(2) (I) THE FOR-PROFIT INSTITUTIONS OF HIGHER EDUCATION FUND AND THE PRIVATE CAREER SCHOOL FUND SHALL BE USED:

1. IN THE EVENT OF A SCHOOL CLOSURE BY A FOR-PROFIT INSTITUTION OF HIGHER EDUCATION OR A PRIVATE CAREER SCHOOL, TO PROVIDE A FULL REFUND OF TUITION AND FEES INCURRED BY A STUDENT THAT HAVE NOT BEEN REIMBURSED OR DISCHARGED;

2. SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, TO PROVIDE A REFUND, AS DETERMINED BY THE SECRETARY, OF TUITION AND FEES INCURRED BY A STUDENT THAT HAVE NOT BEEN REIMBURSED OR DISCHARGED, IF A FOR-PROFIT INSTITUTION OF HIGHER EDUCATION OR A PRIVATE CAREER SCHOOL FAILS TO:

A. PERFORM FAITHFULLY ANY ENROLLMENT AGREEMENT OR CONTRACT WITH THE STUDENT; OR

B. COMPLY WITH ANY PROVISIONS OF THIS ARTICLE; OR

3. FOR ANY OTHER REASON DIRECTLY RELATED TO THE ORIGINAL PURPOSE OF THE FUND DEEMED APPROPRIATE BY THE SECRETARY.

~~(iii) (II) 1. The fund for institutions of 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

1 under § 11–202.2 of this subtitle, the Commission shall exempt that institution from the
2 requirement to contribute to the fund.

3 B. Notwithstanding ~~subsubsub~~paragraph A of this
4 ~~subsub~~paragraph, an institution shall be required to contribute to the fund following a
5 claim against the fund being sustained on behalf of a Maryland student participating in a
6 fully online distance education program offered in the State by the institution.

7 3. Notwithstanding ~~subsub~~paragraph 2 of this
8 subparagraph, a student who takes courses from an institution exempted from contribution
9 to the fund under ~~subsub~~paragraph 2 of this subparagraph may make a claim against the
10 fund in accordance with ~~subsub~~paragraph 1 of this subparagraph.

11 ~~(iv)~~ **(III)** 1. The funds shall be continuing, nonlapsing funds,
12 not subject to § 7–302 of the State Finance and Procurement Article.

13 2. Any unspent portions of the funds may not be transferred
14 or revert to the General Fund of the State, but shall remain in the funds to be used for the
15 purposes specified in this subsection.

16 3. No other State money may be used to support the funds.

17 ~~(v)~~ **(IV)** The Commission shall be subrogated to and may enforce
18 the claim of any student to the extent of any actual or authorized reimbursement from the
19 funds.

20 **(3) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, A**
21 **STUDENT SHALL FOLLOW THE COMPLAINT PROCESS OF THE INSTITUTION BEFORE**
22 **MAKING A CLAIM UNDER PARAGRAPH (2)(I)2 OF THIS SUBSECTION TO A GUARANTY**
23 **FUND ESTABLISHED UNDER THIS SECTION.**

24 **(II) IF AN INSTITUTION DOES NOT RESPOND WITHIN 30 DAYS**
25 **AFTER THE RECEIPT OF A COMPLAINT FILED UNDER SUBPARAGRAPH (I) OF THIS**
26 **PARAGRAPH, THE STUDENT MAY MAKE A CLAIM TO A GUARANTY FUND ESTABLISHED**
27 **UNDER THIS SECTION.**

28 ~~[(3)]~~ **(4)** (i) Each for–profit institution of higher education or private
29 career school that is required to obtain a certificate of approval and, subject to paragraph
30 (2)(iii)2 of this subsection, each institution of higher education required to register under §
31 11–202.2 of this subtitle shall pay an annual fee into the appropriate fund.

32 (ii) The Commission shall determine the amount of the fee based on
33 the probable amount of money needed for the funds for each fiscal year. If the moneys in
34 the guaranty funds are insufficient to satisfy duly authorized claims, the participating
35 institutions may be reassessed and shall pay the additional amounts required.

1 (iii) The Commission may not issue a certificate of approval or
2 registration to, and shall revoke any certificate of approval or registration previously issued
3 to, an institution that fails to pay any annual fee or reassessment.

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

8 ~~[(4)] (5)~~ (i) The funds shall be maintained by the State Comptroller
9 who may deposit the assets of the funds in any manner that is consistent with the purposes
10 of the funds.

11 (ii) All interest or other return on fund investments shall be credited
12 to the funds.

13 ~~[(5)] (6)~~ The Commission, through the Attorney General, may enforce any
14 claim to which the Commission has been subrogated under this subsection.

15 (e) On or before December 1 each year, the Commission shall report to the
16 Governor and, in accordance with § 2-1246 of the State Government Article, the General
17 Assembly, regarding:

18 (1) The number of claims made against each guaranty fund established
19 under this section;

20 (2) The type, size, and program of the institutions against which the claims
21 are made;

22 **(3) THE REASON FOR THE CLAIM, INCLUDING WHETHER THE PRIVATE**
23 **CAREER SCHOOL OR FOR-PROFIT INSTITUTION OF HIGHER EDUCATION CLOSED**
24 **AND, IF SO, WHETHER SOME STUDENTS WERE ABLE TO FINISH THEIR PROGRAM**
25 **DESPITE THE CLOSURE AND, IF SO, HOW MANY;**

26 ~~[(3)] (4)~~ The number of claims that are approved and the associated
27 payouts from the funds; and

28 ~~[(4)] (5)~~ The number of claims that are denied.

29 **[15-118.] 11-408.**

30 ~~[(a)]~~ This section applies to a public senior higher education institution and a
31 community college in the State.]

32 **(A) EACH INSTITUTION OF POSTSECONDARY EDUCATION THAT OPERATES**
33 **IN THE STATE AND THAT IS REQUIRED TO MAKE A NET PRICE CALCULATOR**

1 PUBLICLY AVAILABLE ON ITS WEB SITE UNDER THE FEDERAL HIGHER EDUCATION
2 OPPORTUNITY ACT OF 2008, 20 U.S.C.A. § 1015A, SHALL ENSURE THAT THE NET
3 PRICE CALCULATOR IS POSTED ON ITS WEB SITE IN A CONSPICUOUS LOCATION.

4 (b) (1) [Beginning in the 2014–2015 academic year, for] FOR all first–time,
5 full–time undergraduate [freshmen, an institution of higher education] STUDENTS AT AN
6 INSTITUTION OF POSTSECONDARY EDUCATION THAT OPERATES IN THE STATE, THE
7 INSTITUTION shall provide to the student information on the cost of higher education at
8 the institution by completing and mailing or providing electronically, at a minimum, the
9 information contained on the form known as the Financial Aid Shopping Sheet, as
10 promulgated by the U.S. Department of Education.

11 (2) The Financial Aid Shopping Sheet or the information contained on the
12 Financial Aid Shopping Sheet shall be mailed or provided electronically to the student at
13 the same time that an award of federal financial aid is mailed or provided electronically to
14 the student.

15 SECTION 2. AND BE IT FURTHER ENACTED, That § 11–203(d)(2)(i)1 of the
16 Education Article, as enacted by Section 1 of this Act, does not apply to a for–profit
17 institution of higher education that underwent an orderly closure on or before October 1,
18 2016, that included a teach–out plan:

19 (1) to teach–out the students enrolled in the for–profit institution of higher
20 education at the time of closure;

21 (2) that requires a teach–out to be conducted by the for–profit institution
22 of higher education;

23 (3) that requires a teach–out to be provided to the students using the same
24 method of instructional delivery that was provided to the students on or before October 1,
25 2016; and

26 (4) that requires completion on or before December 31, 2017.

27 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2016.