

HOUSE BILL 1103

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EMERGENCY BILL

8lr3710
CF SB 795

By: **Delegate Hettleman**

Introduced and read first time: February 7, 2018

Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Higher Education – Private Career Schools and For-Profit Institutions of**
3 **Higher Education – Regulation**

4 FOR the purpose of prohibiting certain private career schools and for-profit institutions of
5 higher education from enrolling certain students unless the students are made aware
6 of certain information; requiring the Maryland Higher Education Commission to
7 require certain private career schools and for-profit institutions of higher education
8 to furnish a performance bond or other form of financial guarantee that covers
9 certain tuition liability in addition to and separate from certain other requirements;
10 requiring a certain fund established for for-profit institutions of higher education to
11 maintain a certain balance; requiring certain for-profit institutions of higher
12 education to pay a certain fee into the fund; specifying that the requirement to pay
13 a certain fee may not be satisfied by certain methods; requiring the Commission to
14 make certain calculations and refund certain money or require the payment of a
15 certain fee under certain circumstances; making a technical correction; making this
16 Act an emergency measure; and generally relating to the regulation of private career
17 schools and for-profit institutions of higher education.

18 BY repealing and reenacting, with amendments,
19 Article – Commercial Law
20 Section 13–320
21 Annotated Code of Maryland
22 (2013 Replacement Volume and 2017 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article – Education
25 Section 11–203
26 Annotated Code of Maryland
27 (2014 Replacement Volume and 2017 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 That the Laws of Maryland read as follows:

2 **Article – Commercial Law**

3 13–320.

4 **(A)** A private career school or for–profit institution of higher education, as defined
5 under § 10–101 of the Education Article, may not enroll a student in a program that is
6 intended to lead to employment in a field that requires licensure or certification in the State
7 if:

8 (1) Successful completion of the educational course offerings in the
9 program at the private career school or for–profit institution of higher education will not
10 meet the State educational requirements for licensure or certification;

11 (2) The State entity that licenses or certifies individuals in the field
12 requires as a condition of licensure or certification that the private career school or
13 for–profit institution of higher education attended by the individual satisfies a statutory or
14 regulatory requirement, and the school does not satisfy the requirement; or

15 (3) The private career school or for–profit institution of higher education is
16 aware or reasonably should have been aware of any other factors that may lead to the
17 ineligibility of the student to pursue or obtain licensure or certification in the State.

18 **(B) A PRIVATE CAREER SCHOOL OR FOR–PROFIT INSTITUTION OF HIGHER**
19 **EDUCATION MAY NOT ENROLL A STUDENT UNLESS THE INSTITUTION MAKES THE**
20 **STUDENT AWARE OF THE FOLLOWING INFORMATION:**

21 **(1) TOTAL COST OF THE PROGRAM;**

22 **(2) LENGTH OF THE PROGRAM;**

23 **(3) REFUND INFORMATION;**

24 **(4) TRANSFERABILITY OF CREDITS; AND**

25 **(5) THE COHORT DEFAULT RATE OF THE INSTITUTION.**

26 **Article – Education**

27 11–203.

28 **(a) (1) [The] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE**
29 Commission may require any institution of postsecondary education that is required to
30 obtain a certificate of approval or an institution of higher education that is required to
31 register under § 11–202.2 of this subtitle to furnish a performance bond or other form of

1 financial guarantee for either the certificate of approval or the registration to the State
2 conditioned that the institution will:

3 [(1)] (I) Perform faithfully all agreements or contracts it makes with its
4 students; and

5 [(2)] (II) Comply with this article.

6 **(2) IN ADDITION TO AND SEPARATE FROM THE REQUIREMENTS OF**
7 **SUBSECTION (D)(4) AND (5) OF THIS SECTION, THE COMMISSION SHALL REQUIRE**
8 **EACH PRIVATE CAREER SCHOOL AND FOR-PROFIT INSTITUTION OF HIGHER**
9 **EDUCATION THAT OPERATES IN THE STATE TO FURNISH A PERFORMANCE BOND OR**
10 **OTHER FORM OF FINANCIAL GUARANTEE THAT COVERS THE TOTAL MARYLAND**
11 **STUDENT TUITION LIABILITY OF THE SCHOOL OR INSTITUTION.**

12 (b) [Any] **EXCEPT AS PROVIDED UNDER SUBSECTION (A)(2) OF THIS**
13 **SECTION, ANY** bond or guarantee required under this section shall be in the form and
14 amount the Secretary requires.

15 (c) (1) The total liability of a surety on a bond or guarantee under this section
16 may not exceed the amount of the bond or guarantee.

17 (2) If the total amount of claims filed against a bond or guarantee exceeds
18 the amount of the bond or guarantee, the surety shall pay the amount of the bond or
19 guarantee to the Secretary for distribution to the claimants.

20 (d) (1) By regulation, the Commission:

21 (i) Shall create and provide for the operation of two separate
22 guaranty funds for:

23 1. For-profit institutions of higher education; and

24 2. Private career schools; and

25 (ii) May create and provide for the operation of a guaranty fund for
26 institutions of higher education that are required to register under § 11-202.2 of this
27 subtitle.

28 (2) (i) The for-profit institutions of higher education fund and the
29 private career school fund shall be used:

30 1. In the event of a school closure by a for-profit institution
31 of higher education or a private career school, to provide a full refund of tuition and fees
32 incurred by a student that have not been reimbursed or discharged;

1 2. Subject to paragraph (3) of this subsection, to provide a
2 refund, as determined by the Secretary, of tuition and fees incurred by a student that have
3 not been reimbursed or discharged, if a for-profit institution of higher education or a
4 private career school fails to:

5 A. Perform faithfully any enrollment agreement or contract
6 with the student; or

7 B. Comply with any provisions of this article; or

8 3. For any other reason directly related to the original
9 purpose of the fund deemed appropriate by the Secretary.

10 (ii) 1. The fund for institutions of higher education that are
11 required to register under § 11-202.2 of this subtitle shall be used to reimburse any student
12 at any of these institutions who is entitled to a refund of tuition and fees because the
13 institution has failed to perform faithfully any agreement or contract with the student or
14 failed to comply with any provision of this article.

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

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

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

28 (iii) 1. The funds shall be continuing, nonlapsing funds, not
29 subject to § 7-302 of the State Finance and Procurement Article.

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

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

34 (iv) The Commission shall be subrogated to and may enforce the
35 claim of any student to the extent of any actual or authorized reimbursement from the
36 funds.

1 (3) (i) Subject to subparagraph (ii) of this paragraph, a student shall
2 follow the complaint process of the institution before making a claim under paragraph
3 (2)(i)2 of this subsection to a guaranty fund established under this section.

4 (ii) If an institution does not respond within 30 days after the receipt
5 of a complaint filed under subparagraph (i) of this paragraph, the student may make a
6 claim to a guaranty fund established under this section.

7 (4) (i) Each [for-profit institution of higher education or] private career
8 school that is required to obtain a certificate of approval and, subject to paragraph [(2)(iii)2]
9 **(2)(II)2** of this subsection, each institution of higher education required to register under
10 § 11-202.2 of this subtitle shall pay an annual fee into the appropriate fund.

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

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

18 (iv) The Commission shall deposit into the appropriate fund any
19 penalty assessed against [a for-profit institution of higher education,] AN institution of
20 higher education required to register under § 11-202.2 of this subtitle[,] or A private career
21 school, respectively, under the terms of § 11-204 of this subtitle.

22 **(5) (I) THE FUND REQUIRED TO BE ESTABLISHED FOR**
23 **FOR-PROFIT INSTITUTIONS OF HIGHER EDUCATION UNDER PARAGRAPH (1)(I)1 OF**
24 **THIS SUBSECTION SHALL MAINTAIN A BALANCE THAT IS NOT LESS THAN THE**
25 **AMOUNT OF MONEY THAT WOULD BE NEEDED TO REFUND ALL OF THE MARYLAND**
26 **STUDENTS AT THE FOR-PROFIT INSTITUTION OF HIGHER EDUCATION THAT HAS THE**
27 **LARGEST STUDENT TUITION LIABILITY IN THE STATE, LESS ANY MONEY THAT**
28 **WOULD BE RECOVERABLE THROUGH FEDERAL LOAN DISCHARGE.**

29 **(II) 1. SUBJECT TO SUBSUBPARAGRAPH 2 OF THIS**
30 **SUBPARAGRAPH, ON OR BEFORE AUGUST 1, 2018, EACH FOR-PROFIT INSTITUTION**
31 **SHALL PAY A FEE INTO THE FUND THAT IS EQUAL TO THE PERCENTAGE OF THE FUND**
32 **THAT IS THE NUMBER OF MARYLAND STUDENTS WHO ATTEND THE INSTITUTION,**
33 **MULTIPLIED BY THE AVERAGE MARYLAND STUDENT TUITION LIABILITY AT THAT**
34 **INSTITUTION, DIVIDED BY THE TOTAL MARYLAND STUDENT TUITION LIABILITY AT**
35 **FOR-PROFIT INSTITUTIONS OF HIGHER EDUCATION THAT OPERATE IN THE STATE.**

36 **2. THE REQUIREMENT TO PAY A FEE UNDER THIS**

1 SUBPARAGRAPH MAY NOT BE SATISFIED BY FURNISHING A PERFORMANCE BOND OR
2 OTHER FORM OF FINANCIAL GUARANTEE.

3 (III) 1. ON OR BEFORE AUGUST 1, 2022, AND EVERY 4 YEARS
4 THEREAFTER, THE COMMISSION SHALL RECALCULATE THE AMOUNT OF THE FUND
5 AS DESCRIBED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.

6 2. AFTER MAKING THE CALCULATION UNDER
7 SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH, THE COMMISSION SHALL
8 RECALCULATE THE FEE DESCRIBED UNDER SUBPARAGRAPH (II) OF THIS
9 PARAGRAPH.

10 3. AFTER MAKING THE CALCULATIONS DESCRIBED
11 UNDER THIS SUBPARAGRAPH, THE COMMISSION SHALL:

12 A. REFUND THE DIFFERENCE IN THE FEES PAID BY AN
13 INSTITUTION WHOSE SHARE IS LESS THAN THE AMOUNT OF THE FEE PAID BY THAT
14 INSTITUTION 4 YEARS EARLIER; AND

15 B. REQUIRE AN INSTITUTION TO PAY A FEE INTO THE
16 FUND IF THE INSTITUTION'S SHARE IS MORE THAN THE AMOUNT OF THE FEE, IF ANY,
17 PAID BY THE INSTITUTION 4 YEARS EARLIER.

18 [(5)] (6) (i) The funds shall be maintained by the State Comptroller
19 who may deposit the assets of the funds in any manner that is consistent with the purposes
20 of the funds.

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

23 [(6)] (7) The Commission, through the Attorney General, may enforce any
24 claim to which the Commission has been subrogated under this subsection.

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

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

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

32 (3) The reason for the claim, including whether the private career school or
33 for-profit institution of higher education closed and, if so, whether some students were able

1 to finish their program despite the closure and, if so, how many;

2 (4) The number of claims that are approved and the associated payouts
3 from the funds; and

4 (5) The number of claims that are denied.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
6 measure, is necessary for the immediate preservation of the public health or safety, has
7 been passed by a yea and nay vote supported by three-fifths of all the members elected to
8 each of the two Houses of the General Assembly, and shall take effect from the date it is
9 enacted.