

SENATE BILL 795

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EMERGENCY BILL

8lr1275
CF HB 1103

By: **Senators Pinsky, Conway, Kagan, Nathan-Pulliam, Robinson, Young, and Zucker**

Introduced and read first time: February 5, 2018

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 16, 2018

CHAPTER _____

1 AN ACT concerning

2 **Higher Education – Private Career Schools ~~and~~, For-Profit Institutions of**
3 **Higher Education, and For-Profit Online Distance Education Programs –**
4 **Regulation**

5 FOR the purpose of prohibiting certain private career schools ~~and~~, for-profit institutions of
6 higher education, and certain institutions of higher education required to register
7 with the Maryland Higher Education Commission under certain circumstances from
8 enrolling certain students unless the students are made aware of certain information
9 in certain programs under certain circumstances; requiring certain schools or
10 institutions to provide to certain students certain information before the student
11 signs an enrollment agreement, completes registration, or makes a financial
12 commitment to the school or institution; requiring certain information to be
13 displayed in a certain manner; requiring certain schools and institutions to maintain
14 certain records for a certain period of time; requiring the Maryland Higher Education
15 Commission to require certain private career schools and for-profit institutions of
16 higher education to furnish a performance bond or other form of financial guarantee
17 that covers certain tuition liability irrevocable letter of credit in a certain amount
18 and between the surety and the Commission in addition to and separate from certain
19 other requirements; requiring a certain fund established for for-profit institutions
20 of higher education to maintain a certain balance; requiring certain for-profit
21 institutions of higher education to pay a certain fee into the fund; specifying that the
22 requirement to pay a certain fee may not be satisfied by certain methods; requiring
23 the Commission to make certain calculations and refund certain money or require
24 the payment of a certain fee under certain circumstances; making a technical

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.



~~correction~~ authorizing the Commission to create and provide for certain guaranty funds; making this Act an emergency measure; and generally relating to the regulation of private career schools ~~and~~, for-profit institutions of higher education, and for-profit online distance education programs.

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

BY repealing and reenacting, without amendments,
 Article – Education
 Section 11–202.2(a) and (b)
 Annotated Code of Maryland
 (2018 Replacement Volume)

BY repealing and reenacting, with amendments,
 Article – Education
 Section ~~11–203~~ 11–203(a) through (c) and (d)(1)
 Annotated Code of Maryland
 (2014 Replacement Volume and 2017 Supplement)

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

Article – Commercial Law

13–320.

(A) A private career school or for-profit institution of higher education, as defined under § 10–101 of the Education Article, **OR A FOR-PROFIT INSTITUTION OF HIGHER EDUCATION THAT IS REQUIRED TO REGISTER WITH THE MARYLAND HIGHER EDUCATION COMMISSION UNDER § 11–202.2 OF THE EDUCATION ARTICLE**, may not enroll a student in a program that is intended to lead to employment in a field that requires licensure or certification in the State if:

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

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

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

4 (B) (1) ~~A~~ BEFORE A PROSPECTIVE STUDENT SIGNS AN ENROLLMENT
5 AGREEMENT, COMPLETES REGISTRATION, OR MAKES A FINANCIAL COMMITMENT TO
6 A PRIVATE CAREER SCHOOL OR, FOR-PROFIT INSTITUTION OF HIGHER EDUCATION,
7 OR FOR-PROFIT INSTITUTION OF HIGHER EDUCATION THAT IS REQUIRED TO
8 REGISTER WITH THE COMMISSION, THE SCHOOL OR INSTITUTION SHALL PROVIDE
9 TO THE STUDENT ~~MAY NOT ENROLL A STUDENT UNLESS THE INSTITUTION MAKES~~
10 ~~THE STUDENT AWARE OF THE FOLLOWING INFORMATION:~~

11 ~~(1) TOTAL COST OF THE PROGRAM;~~

12 ~~(2) LENGTH OF THE PROGRAM;~~

13 ~~(3) REFUND INFORMATION;~~

14 ~~(4) TRANSFERABILITY OF CREDITS; AND~~

15 ~~(5) THE COHORT DEFAULT RATE OF THE INSTITUTION.~~

16 (I) THE TOTAL COST OF ATTENDANCE FOR THE PROGRAM, AS
17 DEFINED IN 20 U.S.C. § 1087LL;

18 (II) THE LENGTH OF THE PROGRAM;

19 (III) THE NUMBER OF CLOCK OR CREDIT HOURS, OR THE
20 EQUIVALENT INFORMATION;

21 (IV) THE SCHOOL OR INSTITUTION'S CANCELLATION AND
22 REFUND POLICY;

23 (V) THE PROGRAM'S COMPLETION RATES FOR BOTH
24 FULL-TIME AND PART-TIME STUDENTS; AND

25 (VI) THE PROGRAM'S WITHDRAWAL RATES.

26 (2) (I) THE INFORMATION DESCRIBED UNDER PARAGRAPH (1) OF
27 THIS SUBSECTION SHALL BE PROMINENTLY DISPLAYED IN A LETTER OR E-MAIL TO
28 A PROSPECTIVE STUDENT.

29 (II) THE LETTER OR E-MAIL MAY NOT CONTAIN ANY OTHER
30 SUBSTANTIVE INFORMATION FROM THE SCHOOL OR INSTITUTION.

1 the institution's application, conducts a hearing concerning the institution's application, or
2 participates in judicial review regarding an institution's application.

3 (ii) An institution that continues to operate without a registration
4 under subparagraph (i) of this paragraph shall furnish a performance bond or other form
5 of financial guarantee to the State in an amount set by regulation that is in addition to and
6 separate from a performance bond or other form of financial guarantee required under §
7 11-203 of this subtitle.

8 11-203.

9 (a) (1) [The] **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE**
10 Commission may require any institution of postsecondary education that is required to
11 obtain a certificate of approval or an institution of higher education that is required to
12 register under § 11-202.2 of this subtitle to furnish a performance bond or other form of
13 financial guarantee for either the certificate of approval or the registration to the State
14 conditioned that the institution will:

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

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

18 (2) **IN ADDITION TO AND SEPARATE FROM THE REQUIREMENTS OF**
19 **SUBSECTION (D)(4) ~~AND (5)~~ OF THIS SECTION, THE COMMISSION SHALL REQUIRE**
20 **EACH PRIVATE CAREER SCHOOL AND FOR-PROFIT INSTITUTION OF HIGHER**
21 **EDUCATION THAT OPERATES IN THE STATE, AND EACH FOR-PROFIT INSTITUTION**
22 **OF HIGHER EDUCATION THAT IS REQUIRED TO REGISTER WITH THE COMMISSION**
23 **UNDER § 11-202.2 OF THIS SUBTITLE, TO FURNISH A PERFORMANCE BOND OR**
24 **~~OTHER FORM OF FINANCIAL GUARANTEE THAT COVERS THE TOTAL MARYLAND~~**
25 **~~STUDENT TUITION LIABILITY OF THE SCHOOL OR INSTITUTION~~ IRREVOCABLE**
26 **LETTER OF CREDIT IN AN AMOUNT EQUAL TO THE SCHOOL'S OR INSTITUTION'S**
27 **NON-TITLE IV ADJUSTED GROSS TUITION AND FEES FOR THE PRIOR JULY 1**
28 **THROUGH JUNE 30.**

29 (b) (1) [Any] **EXCEPT AS PROVIDED UNDER SUBSECTION (A)(2) OF THIS**
30 **SECTION AND SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, ANY** bond or
31 guarantee required under this section shall be in the form and amount the Secretary
32 requires.

33 (2) **A PERFORMANCE BOND OR IRREVOCABLE LETTER OF CREDIT**
34 **REQUIRED UNDER THIS SECTION SHALL BE BETWEEN THE SURETY AND THE**
35 **COMMISSION.**

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

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

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

7 (i) ~~Shall~~ MAY create and provide for the operation of two separate
8 guaranty funds for:

- 9 1. For-profit institutions of higher education; and
- 10 2. Private career schools; and

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

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

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

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

23 ~~A. Perform faithfully any enrollment agreement or contract
24 with the student; or~~

25 ~~B. Comply with any provisions of this article; or~~

26 ~~3. For any other reason directly related to the original
27 purpose of the fund deemed appropriate by the Secretary.~~

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

~~1 2. A. After 3 years of claims history during which no
2 claim against the fund has been sustained on behalf of a Maryland student participating
3 in a fully online distance education program offered in the State by an institution registered
4 under § 11-202.2 of this subtitle, the Commission shall exempt that institution from the
5 requirement to contribute to the fund.~~

~~6 B. Notwithstanding subsubsubparagraph A of this
7 subsubparagraph, an institution shall be required to contribute to the fund following a
8 claim against the fund being sustained on behalf of a Maryland student participating in a
9 fully online distance education program offered in the State by the institution.~~

~~10 3. Notwithstanding subsubparagraph 2 of this
11 subparagraph, a student who takes courses from an institution exempted from contribution
12 to the fund under subsubparagraph 2 of this subparagraph may make a claim against the
13 fund in accordance with subsubparagraph 1 of this subparagraph.~~

~~14 (iii) 1. The funds shall be continuing, nonlapsing funds, not
15 subject to § 7-302 of the State Finance and Procurement Article.~~

~~16 2. Any unspent portions of the funds may not be transferred
17 or revert to the General Fund of the State, but shall remain in the funds to be used for the
18 purposes specified in this subsection.~~

~~19 3. No other State money may be used to support the funds.~~

~~20 (iv) The Commission shall be subrogated to and may enforce the
21 claim of any student to the extent of any actual or authorized reimbursement from the
22 funds.~~

~~23 (3) (i) Subject to subparagraph (ii) of this paragraph, a student shall
24 follow the complaint process of the institution before making a claim under paragraph
25 (2)(i)2 of this subsection to a guaranty fund established under this section.~~

~~26 (ii) If an institution does not respond within 30 days after the receipt
27 of a complaint filed under subparagraph (i) of this paragraph, the student may make a
28 claim to a guaranty fund established under this section.~~

~~29 (4) (i) Each [for-profit institution of higher education or] private career
30 school that is required to obtain a certificate of approval and, subject to paragraph [(2)(iii)2]
31 (2)(II)2 of this subsection, each institution of higher education required to register under
32 § 11-202.2 of this subtitle shall pay an annual fee into the appropriate fund.~~

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

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

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

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

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

~~2. THE REQUIREMENT TO PAY A FEE UNDER THIS SUBPARAGRAPH MAY NOT BE SATISFIED BY FURNISHING A PERFORMANCE BOND OR OTHER FORM OF FINANCIAL GUARANTEE.~~

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

~~2. AFTER MAKING THE CALCULATION UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH, THE COMMISSION SHALL RECALCULATE THE FEE DESCRIBED UNDER SUBPARAGRAPH (H) OF THIS PARAGRAPH.~~

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

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

1 **~~B. REQUIRE AN INSTITUTION TO PAY A FEE INTO THE~~**
2 **~~FUND IF THE INSTITUTION'S SHARE IS MORE THAN THE AMOUNT OF THE FEE, IF ANY,~~**
3 **~~PAID BY THE INSTITUTION 4 YEARS EARLIER.~~**

4 ~~[(5)] (6)~~ (i) ~~The funds shall be maintained by the State Comptroller~~
5 ~~who may deposit the assets of the funds in any manner that is consistent with the purposes~~
6 ~~of the funds.~~

7 (ii) ~~All interest or other return on fund investments shall be credited~~
8 ~~to the funds.~~

9 ~~[(6)] (7)~~ ~~The Commission, through the Attorney General, may enforce any~~
10 ~~claim to which the Commission has been subrogated under this subsection.~~

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

14 (1) ~~The number of claims made against each guaranty fund established~~
15 ~~under this section;~~

16 (2) ~~The type, size, and program of the institutions against which the claims~~
17 ~~are made;~~

18 (3) ~~The reason for the claim, including whether the private career school or~~
19 ~~for-profit institution of higher education closed and, if so, whether some students were able~~
20 ~~to finish their program despite the closure and, if so, how many;~~

21 (4) ~~The number of claims that are approved and the associated payouts~~
22 ~~from the funds; and~~

23 (5) ~~The number of claims that are denied.~~

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