

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 795

(Senator Pinsky, *et al.*)

Education, Health, and Environmental Affairs

Appropriations

Higher Education – Private Career Schools, For-Profit Institutions of Higher Education, and For-Profit Online Distance Education Programs – Regulation

This emergency bill requires a private career school, for-profit institution of higher education, or a for-profit institution that is required to register with the Maryland Higher Education Commission (MHEC) to provide a prospective student with specified information prior to the student signing an enrollment agreement, completing registration, or making a financial commitment to the school or institution. The bill also prohibits a for-profit institution that is required to register from enrolling a student in a program that is intended to lead to employment in a field that requires licensure or certification in the State under specified circumstances. In addition to the current guaranty funds, each private career school and for-profit institution (including those required to register) must furnish to MHEC a performance bond or irrevocable letter of credit in an amount equal to the school's or institution's *non-Title IV* adjusted gross tuition and fees for the prior July 1 through June 30. The bill also authorizes, rather than requires, MHEC to operate two separate guaranty funds for (1) for-profit institutions and (2) private career schools.

Fiscal Summary

State Effect: No material impact on State finances as the bill in large part codifies existing practice, as explained below.

Local Effect: None.

Small Business Effect: Meaningful, as discussed below.

Analysis

Bill Summary: Before a prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to a private career school or for-profit

institution of higher education, including those that are required to register with MHEC, the school or institution must provide to the student the following information:

- the total cost of attendance for the program, as defined in 20 USC Section 1087LL;
- the length of the program;
- the number of clock or credit hours, or the equivalent information;
- the school's or institution's cancellation and refund policy;
- the program's completion rates for both full-time and part-time students;
- the program's withdrawal rates; and
- the median combined loan debt for federal loans, institutional loans, and private loans certified by the school or institution, for all students who completed the program during the most recently completed award year.

The information described must be prominently displayed in a letter or email to a prospective student. The letter or email may not contain any other substantive information from the school or institution. The school or institution must maintain records of the school's or institution's efforts to provide the information described to a prospective student for at least five years after the student enrolls at the school or institution.

Current Law/Background: MHEC is authorized under current law to require any institution of postsecondary education that is required to obtain a certificate of approval from MHEC or required to register with MHEC to furnish a performance bond or other form of financial guarantee to the State that the institution will perform faithfully all agreements or contracts it makes with its students and comply with State law in the Education Article.

For-profit Institutions

A "for-profit institution of higher education" is defined as an institution of higher education that generally limits enrollment to graduates of secondary schools; awards degrees at the associate, baccalaureate, or graduate level; and is not a public or private nonprofit institution of higher education. According to MHEC, six for-profit institutions of higher education currently operate in the State: Brightwood with a total enrollment of 748; Fortis with a total enrollment of 1,397; Kaplan with a total enrollment of 638; Lincoln Technology with a total enrollment of 672; Stratford University with a total enrollment of 864; and Strayer University with a total enrollment of 5,095 as of the 2013-2014 academic year (the latest data available). Some of these institutions have multiple campuses in the State.

Private Career Schools

A “private career school” is defined in statute as “a privately owned and privately operated institution of postsecondary education other than an institution of higher education that furnishes or offers to furnish programs, whether or not requiring a payment of tuition or fee, for the purpose of training, retraining, or upgrading individuals for gainful employment as skilled or semiskilled workers or technicians in recognized occupations or in new and emerging occupations.”

To operate in Maryland, a private career school must be approved by MHEC; some are also accredited by national associations. Private career school programs generally provide training in one of the following areas: allied health, audio visual methods, cosmetology, barbering, bartending, computers, massage, the Montessori Method of education, real estate, truck driving, or mechanics. There are also programs in cooking, dog grooming, dry cleaning, maritime studies, photography, polygraph, travel, and trade schools.

For-profit Online Distance Education Programs

A “fully online distance education program in the State” is defined as a program, originating outside the State, offered by an out-of-state institution in which (1) a student domiciled in Maryland enrolls; (2) 51% or more of the program is offered through electronic distribution; and (3) MHEC determines 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 in the State. “Out-of-state institution” means an institution of higher education whose primary campus exists outside Maryland and whose authority to grant degrees is conferred by another state.

An institution of higher education that enrolls Maryland students in a fully online distance education program in the State must file an application to register with MHEC before, or within three months of, enrolling the first Maryland student unless it (1) is subject to MHEC academic program review; (2) participates in the Southern Regional Education Board’s Electronic Campus; or (3) participates in the State Authorization Reciprocity Agreement (SARA).

MHEC advises that there are currently three for-profit institutions in the State required to register.

Regulation of For-profit Institutions of Higher Education

An issue paper for the 2018 legislative session titled “[The Regulation of For-profit Institutions of Higher Education](#)” (beginning on page 107) addresses the recent background regarding the regulation of for-profit institutions in the State.

A for-profit institution of higher education that had been operating in Maryland, ITT Technical Institute – Educational Services, Inc. (ITT), closed approximately 139 campuses in 37 states on September 6, 2016. As of December 2017, 74 Maryland ITT students had not received relief through loan discharge or teach-out, although MHEC reports that it has not received any complaints.

Employment that Leads to Licensure or Certification

Under current law, a private career school or for-profit institution of higher education (as defined, the term does not include for-profit institutions required to register with MHEC) 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 offering 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 satisfy a statutory or regulatory requirement, and the school does not satisfy that requirement; or (3) the private career school or for-profit institution of higher education is aware or reasonably should have been aware of any other factors that may lead to the ineligibility of the student to pursue or obtain licensure or certification in the State.

Guaranty Funds – Current Law

Chapters 552 and 553 of 2016 required MHEC to create and provide for two separate guaranty funds (one each for private career schools and for-profit institutions of higher education), which had previously been optional. In the event of the closure of such a school, these guaranty funds must be used to provide a full refund of tuition and fees incurred by a student that have not been reimbursed or discharged. However, this requirement does not apply to a for-profit institution of higher education that underwent an orderly closure on or before October 1, 2016, which included a teach-out plan encompassing specified elements.

Each for-profit institution (as defined, the term does not include for-profit institutions required to register with MHEC) or private career school is required to pay an *annual* fee into the appropriate fund as determined by MHEC.

The guaranty funds must be used to provide a refund, as determined by the Secretary of Higher Education, 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 (1) perform faithfully any enrollment agreement or contract with the student or (2) comply with any provision of the Education Article. Finally, the guaranty funds must

be used to provide a refund, as determined by the Secretary of Higher Education, of tuition and fees incurred by a student that have not been reimbursed or discharged, for any other reason directly related to the original purpose of the funds deemed appropriate by the Secretary of Higher Education.

For-profit Institutions of Higher Education – Guaranty Fund and Performance Bond

In response to Chapters 552 and 553, MHEC published proposed regulations to create a guaranty fund for for-profit institutions on June 23, 2017. This guaranty fund would provide a refund of tuition and fees to students who attend a for-profit institution of higher education that closes, fails to perform any enrollment agreement or contract with the student, or fails to comply with any provisions of the Education Article. The regulations require these institutions to either provide a financial guarantee in a certain amount each year or to make a one-time fund payment.

When reviewed by the Administrative, Executive, and Legislative Review (AELR) Committee, the regulations were found to present potential legal issues of concern ([DLS Control No. 17-064](#)). Of note, the proposed regulations *authorize* the payment of an annual fee and *require* a for-profit institution either to furnish a financial guarantee or provide a one-time payment into the fund. Statute *requires* the payment of an annual fee into the fund. An additional concern expressed by stakeholders and several legislators regarding the proposed regulations was that the guaranty fund was not retroactive and, therefore, would not be available to students who were harmed by the ITT closure in 2016. MHEC asserted that, because the ITT closure occurred prior to the effective date of Chapters 552 and 553, a retroactive guaranty fund would not comply with the law.

However, a letter of advice from the Attorney General’s Office, issued on June 15, 2017, suggested that ITT students could be reimbursed with the guaranty fund that would be created in accordance with Chapters 552 and 553. On July 26, 2017, the AELR Committee requested that the Governor and MHEC delay final adoption of the regulations. However, on November 3, 2017, MHEC submitted a letter to the AELR Committee expressing its intention to move forward with the final adoption of the regulations as originally proposed at its December 13, 2017 meeting. The regulations went into effect January 15, 2018.

Private Career Schools – Guaranty Fund

According to the Code of Maryland Regulations (COMAR 13B.01.01.18), an applicant private career school must make an initial payment of \$2,500 into the guaranty fund before a certificate of approval is issued. Except as otherwise provided, an approved private career school in operation during an assessment year must make a payment into the guaranty fund equal to 0.25% of the school’s adjusted gross tuition. The minimum amount of the annual payment into the fund is \$250, to be paid by a school whether or not the school charges

tuition. An accounting must be made at the end of each assessment year. If, at the end of any assessment year, the accounting indicates that the fund contains \$2.0 million or more, then, during the next assessment year, an assessment may not be made against the schools. The Secretary of Higher Education may not issue a certificate of approval to, and may revoke any certificate of approval previously issued to, a school that fails to pay an annual fee or reassessment to the fund. The Secretary of Higher Education has the authority to determine whether a claim merits reimbursement from the fund and, if so, the (1) amount of the reimbursement; (2) time, place, and manner of its payment; (3) conditions upon which payment must be made; and (4) order in which payments must be made. Claims against the fund may be paid in whole or in part, taking into consideration the (1) amounts available and likely to become available to the fund for payments of claims; (2) size and number of claims likely to be presented in the future; (3) amount of reimbursement of claims in the past; and (4) availability to the claimant of a transfer program.

Private Career Schools – Financial Guarantee – Performance Bond

According to regulations (COMAR 13B.01.01.19) and current practice, new private career schools must maintain a financial guarantee for the first 10 years of operation. The financial guarantee must be in the form of a performance bond or letter of credit. During the initial five years of approval, the amount of the financial guarantee must be sufficient to protect either 50% or 100% of the tuition liability of the school's maximum student enrollment. The percentage is determined by the Secretary based on (1) the financial viability of the school as reflected in a financial statement and (2) the method by which tuition is collected by the school. During the sixth through the tenth year of initial approval, the amount of the financial guarantee must be sufficient to protect a minimum of 30% of tuition liability, and the percentage is determined the same way as the first five years.

After the tenth year of initial approval, the Secretary of Higher Education determines whether a financial guarantee is warranted based on the financial viability of the school, and, if applicable, its parent corporation. The Secretary evaluates on an annual basis the operation of the school and determines whether the institution complies with the minimum financial standards set forth in regulations (COMAR 13B.01.01.17). Private career schools are required to operate in accordance with sound principles of financial management and maintain financial resources adequate for the satisfactory conduct of the school. Financial statements, audited or reviewed by a certified public accountant, and other financial information, including external accounting reports on individual schools and their parent corporations, are evaluated to determine whether to impose a financial guarantee. Both the school and, if applicable, its parent corporation are required to meet the following minimum standards: (1) operate at a profit for the previous two years; (2) maintain at least a one-to-one ratio of current assets to current liabilities for the previous two years; and (3) satisfy federal Title IV requirements, including overall eligibility and each individual standard required by the U.S. Department of Education. Schools that satisfy these

requirements and are beyond their tenth year of operation may be considered to become eligible to have their financial guarantee waived. MHEC advises it is current policy to implement a reduction from 30% to 10% to cover the maximum amount of tuition that may not be collected from Title IV revenue.

Title IV

Title IV of the Higher Education Act of 1965 (HEA) covers the administration of the United States federal student financial aid programs. Generally, Title IV student loans are dischargeable if a school or institution closes prior to the individual receiving a degree if other arrangements are not made. An individual's non-Title IV tuition is generally not dischargeable and may not be otherwise recoverable. Non-Title IV tuition and fee revenues of an institution are tuition and fees that are not covered by federal financial aid.

State Fiscal Effect: Although the bill repeals the requirement that MHEC establish guaranty funds for for-profit institutions and private career schools, which collect nonbudgeted revenues, the bill has no material impact as it in large part codifies existing practice. As explained above, MHEC proposed regulations that require for-profit institutions to either provide a financial guarantee in a certain amount each year *or* make a one-time payment to the guaranty fund. Thus, under current practice, MHEC does not *necessarily* collect revenues from all for-profit institutions of higher education; therefore, the bill has no material impact on the State's nonbudgeted revenues. MHEC can implement the bill with existing resources.

Small Business Effect: Many private career schools are small businesses. Under the bill, some private schools will need to furnish a larger financial guarantee; however, some will be allowed to furnish a smaller financial guarantee. Usually, the financial guarantee is a performance bond.

Generally, schools that will have to provide a *larger* financial guarantee are those that currently provide a reduced financial guarantee. Current regulations and practice allow private career schools to request a reduced financial guarantee after 10 years of operation and proving specified financial viability requirements have been satisfied. *For informational purposes*, 27 private career schools currently provide no financial guarantee and an additional 30 schools have a reduced financial guarantee. However, without analyzing each school's non-Title IV tuition liability, it is unknown how many will actually need to provide a larger financial guarantee.

Other schools will be allowed to provide a *smaller* financial guarantee than is allowed under current regulations because their *non-Title IV* tuition and fee liability is less than their total tuition liability. *For informational purposes*, approximately 80 private career schools furnish a 100% tuition guarantee under current regulations and practice. However,

without analyzing each school's non-Title IV tuition liability, it is unknown how many will actually be able to provide a smaller financial guarantee.

It is assumed that private career schools can make prospective students aware of the specified information in the manner required and maintain required records using existing resources.

Additional Comments: Under current practice, according to MHEC regulations, a for-profit institution provides a financial guarantee in the form of a performance bond or letter of credit, in general, equal to the institution's *non-Title IV* tuition liability for the prior July 1 through June 30. Thus, the amount of their performance bonds or letters of credit should remain the same as under current practice.

For-profit institutions that are required to register with MHEC will also be required to provide a financial guarantee in the form of a performance bond or letter of credit, in general, equal to the institution's *non-Title IV* tuition liability for the prior July 1 through June 30. MHEC reports that approximately three such institutions would be required to furnish a financial guarantee under the bill.

It is assumed that for-profit institutions can make prospective students aware of the specified information in the manner required and maintain required records using existing resources.

Additional Information

Prior Introductions: None.

Cross File: HB 1103 (Delegate Hettleman) - Appropriations.

Information Source(s): Maryland Higher Education Commission; Maryland Independent College and University Association; Department of Legislative Services

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