

Chapter 515

(House Bill 461)

AN ACT concerning

**Maryland Higher Education Commission – Private Nonprofit Institutions of
Higher Education – Regulation
(Private Nonprofit Institution of Higher Education Protection Act of 2019)**

FOR the purpose of requiring the Maryland Higher Education Commission to make certain determinations under certain circumstances; requiring the Commission, jointly with the Office of the Attorney General, to develop a certain procedure for determining and enforcing certain classifications of institutions of higher education; requiring the Commission to adopt certain regulations; defining certain terms; and generally relating to the regulation of private nonprofit institutions of higher education.

BY repealing and reenacting, with amendments,
Article – Education
Section 10–101
Annotated Code of Maryland
(2018 Replacement Volume and 2018 Supplement)

BY adding to
Article – Education
Section 11–407.1
Annotated Code of Maryland
(2018 Replacement Volume and 2018 Supplement)

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

Article – Education

10–101.

- (a) In this division the following words have the meanings indicated.
- (b) “Charter” means the Maryland Charter for Higher Education.
- (c) “Commission” means the Maryland Higher Education Commission.

(d) “For–profit institution of higher education” means 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.

(e) “Governing board” means:

- (1) The Board of Regents of the University System of Maryland;
- (2) The Board of Regents of Morgan State University;
- (3) The Board of Trustees of St. Mary’s College of Maryland; and
- (4) The Board of Trustees of Baltimore City Community College.

(f) “Governing body” means:

- (1) A governing board;
- (2) A board of trustees of a community college;
- (3) The governing entity of private nonprofit institutions of higher education;
- (4) The governing entity of a for–profit institution of higher education; or
- (5) The governing entity of a regional higher education center.

(g) “Independent institution of higher education” means a private nonprofit institution of higher education that generally limits enrollment to graduates of secondary schools, serves a public purpose, and awards degrees at the associate, baccalaureate, or graduate level.

(h) (1) “Institution of higher education” means an institution of postsecondary education that generally limits enrollment to graduates of secondary schools, and awards degrees at either the associate, baccalaureate, or graduate level.

(2) “Institution of higher education” includes public, private nonprofit, and for–profit institutions of higher education.

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

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

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

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

(j) “Private career school” means 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.

(k) (1) “Private nonprofit institution of higher education” means [a private nonprofit] AN institution of higher education [that generally] **THAT:**

(I) BENEFITS NO PERSON THROUGH ANY PART OF ITS NET EARNINGS;

(II) IS LEGALLY AUTHORIZED TO OPERATE AS A NONPROFIT ORGANIZATION BY EACH STATE IN WHICH IT IS PHYSICALLY LOCATED;

(III) IS DETERMINED BY THE INTERNAL REVENUE SERVICE TO BE AN ORGANIZATION TO WHICH CONTRIBUTIONS ARE TAX-DEDUCTIBLE IN ACCORDANCE WITH 26 U.S.C. 501(C)(3); AND

(IV) GENERALLY limits enrollment to graduates of secondary schools and awards degrees at the associate, baccalaureate, or graduate level.

(2) “Private nonprofit institution of higher education” includes an independent institution of higher education.

(3) “PRIVATE NONPROFIT INSTITUTION OF HIGHER EDUCATION” DOES NOT INCLUDE AN INSTITUTION ENGAGING IN A REPORTABLE INCIDENT UNLESS THE COMMISSION HAS DETERMINED THAT THE INCIDENT DOES NOT CONSTITUTE PRIVATE INUREMENT.

(l) “Program” or “educational program” means an organized course of study that leads to the award of a certificate, diploma, or degree.

(m) “Public senior higher education institution” means:

(1) The constituent institutions of the University System of Maryland and the University of Maryland Center for Environmental Science;

(2) Morgan State University; and

(3) St. Mary’s College of Maryland.

(n) “Regional higher education center” means a higher education facility in the State that:

(1) Is operated by a public institution of higher education in the State or a private nonprofit institution of higher education operating under a charter granted by the General Assembly and includes participation by two or more institutions of higher education in the State;

(2) Consists of an array of program offerings from institutions of higher education approved to operate in the State by the Commission or by an act of the General Assembly that specifically satisfies the criteria set forth in § 10–212(b) of this title;

(3) Offers multiple degree levels; and

(4) Is either approved by the Commission to operate in the State or is established by statute.

(O) “REPORTABLE INCIDENT” MEANS ANY OF THE FOLLOWING AS REPORTABLE ON A PRIVATE NONPROFIT INSTITUTION OF HIGHER EDUCATION’S FORM 990 OF THE INTERNAL REVENUE SERVICE:

(1) THE ENGAGEMENT IN AN EXCESS BENEFIT TRANSACTION WITH A DISQUALIFIED PERSON;

(2) THE PROVIDING OF A GRANT OR OTHER ASSISTANCE BY THE INSTITUTION TO A MEMBER OF THE GOVERNING BODY;

(3) THE REPORTING OF RECEIVABLES FROM OR PAYABLES TO A MEMBER OF THE GOVERNING BODY;

(4) THE INSTITUTION WAS A PARTY TO A BUSINESS TRANSACTION CONNECTED TO A MEMBER OF THE INSTITUTION’S GOVERNING BODY;

(5) THE INSTITUTION WAS A PARTY TO A PROHIBITED TAX SHELTER TRANSACTION;

(6) THE INSTITUTION PARTICIPATED IN AN EQUITY–BASED COMPENSATION ARRANGEMENT; OR

(7) THE INSTITUTION PAID COMPENSATION CONTINGENT ON THE REVENUE OF THE INSTITUTION OR ANY RELATED ORGANIZATION.

[(o)] (P) “Secretary” means the Secretary of Higher Education.

[(p)] (Q) “State Plan for Higher Education” means the plan for postsecondary education and research required to be developed by the Maryland Higher Education Commission under § 11–105(b) of this article.

11–407.1.

IF A PRIVATE NONPROFIT INSTITUTION OF HIGHER EDUCATION ENGAGES IN A REPORTABLE INCIDENT, AS DEFINED UNDER § 10–101 OF THIS ARTICLE, THE COMMISSION SHALL DETERMINE WHETHER THE INCIDENT CONSTITUTES PRIVATE INUREMENT.

SECTION 2. AND BE IT FURTHER ENACTED, That on or before July 1, 2019, the Maryland Higher Education Commission, jointly with the Office of the Attorney General, shall develop a procedure for determining and enforcing the classifications of institutions of higher education as enacted by this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That on or before December 1, 2019, the Maryland Higher Education Commission shall adopt regulations relating to institutions of higher education that would be impacted by Section 1 of this Act.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2019.

Approved by the Governor, May 13, 2019.