

SENATE BILL 510

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3lr1581

By: **Senator Pinsky**

Introduced and read first time: January 31, 2013

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Institutions of Higher Education – Fully Online Distance Education**
3 **Programs – Regulation**

4 FOR the purpose of altering the type of institution that is required to register with the
5 Maryland Higher Education Commission before enrolling certain students in
6 certain fully online distance education programs; prohibiting certain
7 institutions of higher education from commencing or continuing to enroll certain
8 students without registering with the Maryland Higher Education Commission;
9 prohibiting certain institutions from receiving a registration from the
10 Commission; requiring the Commission to give certain notice to certain
11 institutions under certain circumstances within a certain period of time;
12 providing certain institutions a certain right to judicial review; authorizing
13 certain institutions to enroll certain students without a registration; requiring
14 certain institutions to submit certain financial statements and prohibiting
15 certain institutions from commencing to operate, do business, or function unless
16 the Commission makes a certain determination; requiring certain institutions
17 to file a certain application with the Commission before enrolling certain
18 students; exempting certain institutions from the requirement to register with
19 the Commission; authorizing certain institutions to continue to operate without
20 a registration under certain circumstances; requiring certain institutions to be
21 accredited, submit certain information to the Commission, notify the
22 Commission of certain changes, comply with certain principles of good practice,
23 make public and publish certain information on the institution's Web site,
24 comply with a certain refund policy and procedures, and be subject to certain
25 complaint investigation; altering a certain refund policy and procedure;
26 prohibiting certain institutions from enrolling certain students unless the
27 institution gives certain notice to certain students of the institution's refund
28 policy for certain students and obtains a certain acknowledgment from certain
29 students that the students have received and understand a certain refund
30 policy; requiring the Commission to make public and post on its Web site the
31 names of certain institutions under certain circumstances; altering the contents

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 of a certain report; requiring the Commission to peruse certain databases and
 2 certain information sources to make certain determinations during a certain
 3 period of time; altering the scope and use of a certain guaranty fund; altering
 4 the type of student on behalf of whom a certain claim can be made against a
 5 certain fund; requiring certain institutions to pay a certain fee into a certain
 6 fund; requiring the Commission to deposit certain penalties into certain funds;
 7 authorizing the Commission to impose a certain penalty on certain institutions
 8 under certain circumstances; requiring the Commission to deposit certain
 9 monetary penalties into a certain fund; subjecting certain institutions to
 10 revocation of registration under certain circumstances; altering the length of
 11 time before which certain institutions will be subject to a certain fine;
 12 prohibiting certain institutions from enrolling certain students under certain
 13 circumstances; requiring certain institutions to submit certain data to the
 14 Maryland Longitudinal Data System; making certain stylistic changes; defining
 15 certain terms; and generally relating to the regulation of institutions of higher
 16 education that offer fully online distance education programs.

17 BY repealing and reenacting, with amendments,
 18 Article – Education
 19 Section 11–202(a)(2) and (3), (c–1)(1), and (d)(1), 11–202.1(b) and (c), 11–202.2,
 20 11–203(a), (d)(1)(iii), (2)(iii), and (3)(i) and (iv), 11–204(c)(2) and (d)(1) and
 21 (3), and 24–707(c)
 22 Annotated Code of Maryland
 23 (2008 Replacement Volume and 2012 Supplement)

24 BY adding to
 25 Article – Education
 26 Section 11–202.3
 27 Annotated Code of Maryland
 28 (2008 Replacement Volume and 2012 Supplement)

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

31 **Article – Education**

32 11–202.

33 (a) (2) Except as provided in [§ 11–202.2] §§ 11–202.1 AND 11–202.2 of
 34 this subtitle, an institution of [postsecondary] **HIGHER** education that enrolls
 35 Maryland students in a fully online distance education program in the State may not
 36 commence or continue [to operate, do business, or function] **ENROLLMENT OF**
 37 **MARYLAND STUDENTS** without registering with the Commission [within 6 months of
 38 enrolling the first Maryland student] **AS PROVIDED UNDER § 11–202.2 OF THIS**
 39 **SUBTITLE.**

1 (3) [Except as provided in § 11–202.1 of this subtitle, but
2 notwithstanding any other provision of law, an institution] **AN INSTITUTION**
3 **REQUIRED TO REGISTER UNDER PARAGRAPH (2) OF THIS SUBSECTION** that is
4 not accredited by an accrediting body recognized and approved by the United States
5 Department of Education may not [commence or continue to operate, do business, or
6 function in the State] **RECEIVE A REGISTRATION FROM THE COMMISSION.**

7 (c–1) (1) If the Commission believes that an institution of [postsecondary]
8 **HIGHER** education that is required to register under **SUBSECTION (A)(2) OF THIS**
9 **SECTION OR** § 11–202.2 of this subtitle does not meet the conditions or standards
10 necessary for the issuance of the registration, the Commission shall give the
11 institution written notice of the specific deficiencies within 6 months after receipt of an
12 application for registration.

13 (d) (1) Any institution of postsecondary education that is denied a
14 certificate of approval by the Commission after a hearing granted under subsection (c)
15 of this section or **ANY INSTITUTION OF HIGHER EDUCATION** that is denied a
16 registration after a hearing granted under subsection (c–1) of this section has the right
17 to judicial review provided by Title 10, Subtitle 2 of the State Government Article.

18 11–202.1.

19 (b) Subject to the requirements imposed by subsection (c) of this section, the
20 following institutions of postsecondary education may operate without a certificate of
21 approval from the Commission **AND MAY ENROLL MARYLAND STUDENTS IN A**
22 **FULLY ONLINE DISTANCE EDUCATION PROGRAM IN THE STATE WITHOUT A**
23 **REGISTRATION FROM THE COMMISSION:**

24 (1) A religious educational institution that certifies, in accordance
25 with procedures established by the Commission, that the institution:

26 (i) Is founded and operated by a church or other religious
27 institution or organization of churches or religious institutions as an integral part of
28 the religious ministry of that institution or organization;

29 (ii) Offers sectarian instruction only designed for and aimed at
30 persons who hold or seek to learn particular religious faiths or beliefs of religious
31 institutions or religious organizations, and provides only educational programs for
32 religious vocations; and

33 (iii) States on the certificate or diploma the religious nature of
34 the award; and

35 (2) A church or other religious institution offering a postsecondary
36 instructional program leading to a certificate or diploma only if designed for and
37 aimed at persons who hold or seek to learn the particular religious faith or beliefs of

1 that church or religious institution, and providing only educational programs for
2 religious purposes.

3 (c) (1) Each institution authorized to operate without a certificate of
4 approval **OR WITHOUT A REGISTRATION** under subsection (b) of this section:

5 (i) Shall submit to the Commission, every 2 years, a financial
6 statement reviewed by an independent accountant retained by the institution; and

7 (ii) May not commence or continue to operate, do business, or
8 function unless the Commission determines on the basis of the financial statement
9 submitted by the institution that the institution possesses adequate financial
10 resources to support the institution's educational program.

11 (2) The Commission shall adopt regulations establishing procedures
12 and standards for the submission and evaluation of the reports and financial
13 statements submitted by institutions under this subsection.

14 11-202.2.

15 (a) (1) In this subtitle the following words have the meanings indicated.

16 (2) "Distance education" means course work taught by an institution
17 of [postsecondary] **HIGHER** education through electronic distribution of instruction to
18 a site other than the principal location of the institution and advertised or described as
19 leading to the formal award of a certificate or degree.

20 (3) "Fully online distance education program in the State" means a
21 program in which:

22 (i) 100% of the program is offered through electronic
23 distribution of instruction to one or more sites other than the principal location of an
24 institution; or

25 (ii) 51% or more of the program is offered through electronic
26 distribution of instruction to one or more sites other than the principal location of an
27 institution and the Commission has determined that the portion of the program
28 offered at a location in the State, if any, does not require a certificate of approval for
29 the institution to operate, do business, or function in the State.

30 (b) (1) [Except as provided in paragraphs (2) and (3) of this subsection,
31 an] **AN** institution of [postsecondary] **HIGHER** education that enrolls Maryland
32 students in a fully online distance education program in the State shall file an
33 application to register with the Commission **BEFORE OR** within 3 months of
34 [enrollment] **ENROLLING THE FIRST MARYLAND STUDENT.**

1 (2) This section does not apply to an institution of [postsecondary]
2 **HIGHER** education that enrolls Maryland students in a fully online distance education
3 program in the State that:

4 (I) [has been approved or received a favorable recommendation]
5 **IS SUBJECT TO PROGRAM REVIEW** by the Commission under § 11–206 or § 11–206.1
6 of this subtitle; **OR**

7 (II) **PARTICIPATES IN THE SOUTHERN REGIONAL**
8 **EDUCATION BOARD’S ELECTRONIC CAMPUS.**

9 (3) (i) [Notwithstanding the requirements of § 11–202(c–1) of this
10 subtitle, an] **AFTER FILING AN APPLICATION UNDER PARAGRAPH (1) OF THIS**
11 **SUBSECTION, AN** institution that has enrolled A Maryland [students] **STUDENT**
12 before obtaining A registration under this section may continue to operate without a
13 registration while the Commission considers the institution’s application, conducts a
14 hearing concerning the institution’s application, or participates in judicial review
15 regarding an institution’s application.

16 (ii) An institution that continues to operate without a
17 registration under subparagraph (i) of this paragraph shall furnish a performance
18 bond or other form of financial guarantee to the State in an amount set by regulation
19 that is in addition to and separate from a performance bond or other form of financial
20 guarantee required under § 11–203 of this subtitle.

21 (c) Each institution **OF HIGHER EDUCATION** required to register under
22 [subsection (b) of] this section shall:

23 (1) Be accredited by an accrediting body recognized and approved by
24 the United States Department of Education;

25 (2) Submit to the Commission:

26 (i) Every 2 years, a financial statement reviewed by an
27 independent accountant retained by the institution;

28 (ii) An affidavit from the president or chief executive officer of
29 the institution affirming:

30 1. That the institution has not filed for bankruptcy
31 protection under Title 11 of the United States Code during its existence; and

32 2. The willingness of the president or the chief executive
33 officer to abide by the provisions of this section;

1 (iii) Proof of good business standing in the state in which the
2 central administration of the institution is incorporated; and

3 (iv) Proof of good academic standing submitted by:

4 1. The regulatory higher education entity in the state in
5 which the central administration of the institution is located; or

6 2. If the state in which the institution is located does not
7 have a regulatory higher education entity, the accrediting body that accredited the
8 institution;

9 (3) Promptly notify the Commission of a change in ownership or a
10 change in majority control;

11 (4) Comply with the Principles of Good Practice for distance education
12 established by the Commission through regulation;

13 (5) Make public and post on the institution's Web site:

14 (i) Whether the institution is registered in Maryland; and

15 (ii) The process by which to make complaints against the
16 institution;

17 (6) Comply with the refund policy and procedures established by the
18 Commission; and

19 (7) Be subject to complaint investigation by the Office of the Attorney
20 General or the Commission or both.

21 (d) The refund policy and procedures established by the Commission shall
22 [allow for] **PERMIT:**

23 (1) (i) At least 2 weeks of required orientation or preenrollment
24 instruction in a fully online distance education program in the State at no charge for a
25 student who has completed less than 24 credits of college-level learning from an
26 accredited institution; and

27 (ii) [A prorated refund methodology that provides a refund to
28 any] **FOR A** student not covered by item (i) of this paragraph **WHO HAS COMPLETED**
29 **UP TO:**

30 **1. ONE WEEK OF A COURSE, TERM, OR PROGRAM**
31 **WITHIN THE APPLICABLE BILLING PERIOD, 100% REFUND; AND**

1 **2.** [who has completed 60% or less] **25%** of a course,
2 term, or program within the applicable billing period, **A REFUND METHODOLOGY**
3 **THAT PROVIDES A REFUND IN AN AMOUNT DETERMINED BY THE COMMISSION**
4 **AND ESTABLISHED BY REGULATION;** or

5 **(2) FOR A STUDENT WHO HAS COMPLETED UP TO:**

6 **(I) ONE WEEK OF A COURSE, TERM, OR PROGRAM WITHIN**
7 **THE APPLICABLE BILLING PERIOD, 100% REFUND; AND**

8 **(II) [A prorated refund methodology that provides a refund to**
9 **any student who has completed 60% or less of a course, term, or program within the**
10 **applicable billing period] 25% OF A COURSE, TERM, OR PROGRAM WITHIN THE**
11 **APPLICABLE BILLING PERIOD, A REFUND METHODOLOGY THAT PROVIDES A**
12 **REFUND IN AN AMOUNT DETERMINED BY THE COMMISSION AND ESTABLISHED**
13 **BY REGULATION.**

14 **(E) AN INSTITUTION OF HIGHER EDUCATION MAY NOT ENROLL A**
15 **MARYLAND STUDENT UNLESS, BEFORE ENROLLMENT, THE INSTITUTION:**

16 **(1) GIVES WRITTEN NOTICE TO THE STUDENT OF THE**
17 **INSTITUTION'S REFUND POLICY FOR MARYLAND STUDENTS; AND**

18 **(2) OBTAINS A WRITTEN ACKNOWLEDGMENT FROM THE STUDENT**
19 **THAT THE STUDENT HAS RECEIVED AND UNDERSTANDS THE REFUND POLICY.**

20 **[(e)] (F) (1) Subject to paragraph (2) of this subsection, the Commission**
21 **shall require the payment of a fee set by regulation, as a condition of registration.**

22 **(2) The fees charged shall be:**

23 **(i) A fixed amount for all institutions regardless of type,**
24 **location, or student enrollment; and**

25 **(ii) Set to cover the approximate cost of implementing a system**
26 **of registration.**

27 **[(f)] (G) The Commission shall make public and post on its Web site:**

28 **(1) A list of registered institutions of [postsecondary] HIGHER**
29 **education that offer fully online distance education programs in the State; and**

30 **(2) If the Commission denies or revokes the registration of an**
31 **institution, the name of the denied or revoked institution.**

1 **[(g)] (H)** On or before December 1 each year, the Commission shall report to
2 the Governor and, in accordance with § 2–1246 of the State Government Article, the
3 General Assembly:

4 (1) The number of institutions of **[postsecondary] HIGHER** education
5 that apply for registration under this section;

6 (2) The type and size of the institutions that apply;

7 (3) The number of institutions approved for registration;

8 (4) The number of institutions denied registration; **[and]**

9 (5) The number of Maryland students enrolled in institutions required
10 to register under this section;

11 **(6) THE RESULTS OF THE REQUIREMENTS OF § 11–202.3 OF THIS**
12 **SUBTITLE;**

13 **(7) THE NUMBER OF INSTITUTIONS FOUND TO BE IN VIOLATION**
14 **OF THE REQUIREMENT TO REGISTER UNDER THIS SECTION;**

15 **(8) ANY FINES IMPOSED, AND IN WHAT AMOUNTS, ON**
16 **INSTITUTIONS THAT VIOLATE THIS SECTION; AND**

17 **(9) ANY FINE REVENUES COLLECTED FROM INSTITUTIONS FOR**
18 **VIOLATION OF THIS SECTION.**

19 **11–202.3.**

20 **AT LEAST BIANNUALLY, THE COMMISSION SHALL PERUSE FEDERAL**
21 **DATABASES AND OTHER INFORMATION SOURCES TO DETERMINE WHETHER**
22 **THERE ARE MARYLAND STUDENTS WHO ARE ENROLLED IN A FULLY ONLINE**
23 **DISTANCE EDUCATION PROGRAM OFFERED BY AN INSTITUTION OF HIGHER**
24 **EDUCATION THAT IS REQUIRED TO REGISTER WITH THE COMMISSION UNDER §**
25 **11–202.2 OF THIS SUBTITLE, BUT THAT HAS FAILED TO REGISTER WITH THE**
26 **COMMISSION.**

27 **11–203.**

28 (a) The Commission may require any institution of postsecondary education
29 that is required to obtain a certificate of approval or **AN INSTITUTION OF HIGHER**
30 **EDUCATION THAT IS** required to register under § 11–202.2 of this subtitle to furnish
31 a performance bond or other form of financial guarantee for either the certificate of
32 approval or the registration to the State conditioned that the institution will:

1 (1) Perform faithfully all agreements or contracts it makes with its
2 students; and

3 (2) Comply with this article.

4 (d) (1) By rule and regulation, the Commission may create and provide for
5 the operation of three separate guaranty funds for:

6 (iii) Institutions of [postsecondary] **HIGHER** education that are
7 required to register under § 11–202.2 of this subtitle.

8 (2) (iii) 1. The fund for institutions of [postsecondary] **HIGHER**
9 education that are required to register under § 11–202.2 of this subtitle shall be used
10 to reimburse any student at any of these institutions who is entitled to a refund of
11 tuition and fees because the institution has failed to perform faithfully any agreement
12 or contract with the student or failed to comply with any provision of this article.

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

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

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

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

32 (iv) The Commission shall deposit into the appropriate fund any
33 penalty assessed against a for–profit institution of higher education, institution of
34 [postsecondary] **HIGHER** education required to register under § 11–202.2 of this
35 subtitle, or private career school, respectively, under the terms of § 11–204 of this
36 subtitle.

1 11-204.

2 (c) (2) (i) Instead of or in addition to reprimanding a for-profit
3 institution of higher education, institution of [postsecondary] **HIGHER** education
4 required to register under § 11-202.2 of this subtitle, or private career school, or
5 suspending or revoking any approval issued to a for-profit institution of higher
6 education or private career school or registration issued to an institution of
7 [postsecondary] **HIGHER** education under § 11-202.2 of this subtitle, the Commission
8 may impose a penalty of up to \$5,000 for each violation as specified in regulations
9 adopted by the Commission.

10 (ii) In accordance with the provisions of this section, the
11 Commission shall deposit any penalty assessed against a for-profit institution of
12 higher education, institution of [postsecondary] **HIGHER** education required to
13 register under § 11-202.2 of this subtitle, or private career school into the respective
14 guaranty fund if such funds exist. Otherwise, all penalties shall be deposited into the
15 General Fund of the State.

16 (d) (1) In addition to any other sanction imposed under this section, an
17 institution of [postsecondary] **HIGHER** education that is required to register under §
18 11-202.2 of this subtitle that willfully and knowingly violates the provisions of this
19 subtitle shall be:

20 (i) Subject to revocation of registration; and

21 (ii) Prohibited from enrolling Maryland students in fully online
22 distance education programs in the State.

23 (3) If an institution is required to register under § 11-202.2 of this
24 subtitle and the institution does not **FILE AN APPLICATION TO** register with the
25 Commission within [6] **3** months of enrolling its first Maryland student or the
26 institution enrolls additional Maryland students in violation of this section, the
27 institution shall be subject to a fine not exceeding \$20,000.

28 24-707.

29 (c) For-profit and private nonprofit institutions of higher education, and
30 institutions of [postsecondary] **HIGHER** education that are required to register under
31 § 11-202.2 of this article shall transfer student-level enrollment data, degree data,
32 and financial aid data for all Maryland residents to the Maryland Longitudinal Data
33 System in accordance with the data security and safeguarding plan developed under §
34 24-704(g)(6) of this subtitle.

35 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
36 October 1, 2013.