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2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 741
Appropriations

(Delegates Stein and Kaiser)

Education, Health, and Environmental Affairs

**Higher Education - Institutions of Postsecondary Education - Consumer
Protection Provisions**

This bill prohibits a private career school or for-profit institution of higher education 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; a violation is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions. The bill requires the Maryland Higher Education Commission (MHEC) to create and provide for two separate guaranty funds (one each for private career schools and for-profit institutions of higher education), which is optional under current law and makes changes to the process and amount that students can claim against the funds. Institutions of postsecondary education that are required to make a net price calculator publicly available on their website under federal law must ensure that it is posted in a conspicuous location. Finally, the bill expands to all institutions of postsecondary education that operate in the State the requirement to provide all first-time full-time undergraduate students with the information contained on the Financial Aid Shopping Sheet.

Fiscal Summary

State Effect: Special fund revenues and expenditures increase due to the creation of a guaranty fund for for-profit institutions and may increase further due to the additional requirements under the bill. MHEC can implement the bill with existing resources. Public four-year institutions of higher education and Baltimore City Community College can post their net price calculators in a conspicuous location on their websites using existing resources. The Consumer Protection Division of the Office of the Attorney General can likely handle additional complaint volume with existing resources. Imposition of existing penalty provisions does not have a material impact on State finances or operations.

Local Effect: Local community colleges can post their net price calculators in a conspicuous location on their websites using existing resources. Imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Potential minimal.

Analysis

Bill Summary:

Private Career School and For-profit Institutions of Higher Education Requirements

Specifically, a private career school or for-profit institution of higher education may not enroll a student 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 (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.

A violation of this prohibition is an unfair or deceptive trade practice under MCPA.

Guaranty Funds

Whereas current law is permissive, the bill requires MHEC to create separate guaranty funds for (1) for-profit institutions of higher education and (2) private career schools. 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.

In addition, 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.

A student must follow the complaint process of the institution before making a claim to a guaranty fund. If an institution does not respond within 30 days after the receipt of a complaint, the student may make a claim to a guaranty fund.

In addition to current reporting requirements, by December 1 of each year, MHEC must report the reason for a claim against each guaranty fund, including whether the private career school or for-profit institution of higher education closed and, if so, how many students (if any) were able to finish their program despite the closure.

Current Law/Background: A report by the Maryland Consumer Rights Coalition titled [*Making the Grade? An Analysis of For-Profit and Career Schools in Maryland*](#) highlighted marketing practices by private career schools and for-profit institutions of higher education, among other things, and has led to increased scrutiny of the consumer practices of these types of institutions.

Maryland Consumer Protection Act

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division of the Office of the Attorney General is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Guaranty Funds

MHEC *may* create and provide for the operation of three separate guaranty funds for (1) for-profit institutions of higher education; (2) private career schools; and (3) institutions of higher education that are required to register because they offer online education to students in the State.

The private career school fund must be used to reimburse any student at a private career school who is entitled to a refund of tuition and fees because the institution has failed to perform faithfully any agreement or contract with the student, or failed to comply with any provision of the Education Article. The private career school fund may also be used for any other function directly related to the original purpose of the fund as deemed appropriate by the Secretary of Higher Education.

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.

If MHEC creates a guaranty fund for for-profit institutions, the for-profit institution of higher education fund must be used to reimburse any student at a for-profit institution of higher education who is entitled to a refund of tuition and fees because the institution has failed to perform faithfully any agreement or contract with the student, or failed to comply with any provision of the Education Article.

Net Price Calculator

In accordance with the federal Higher Education Opportunity Act of 2008 (HEOA), by October 29, 2011, each postsecondary institution that participates in Title IV federal student aid programs must post a net price calculator on its website that uses institutional data to provide estimated net price information to current and prospective students and their families based on a student's individual circumstances. The net price calculator is required for all Title IV institutions that enroll full-time, first-time degree- or certificate-seeking undergraduate students.

Title IV federal student aid programs include Pell grants for students with the lowest expected family contribution, federal work study, and several smaller federal grant programs. Also included under Title IV are the major federal loan programs (*i.e.*, Perkins loans, direct loans, and Federal Family Education Loans).

Institutions may meet this requirement by using the U.S. Department of Education's net price calculator template or by developing their own customized calculator that includes, at a minimum, the same elements as the department's template.

For institutions that choose to develop a custom net price calculator, the calculator must, at a minimum, include an input data element that approximates the student's expected family contribution, such as income, number in family, and dependency status or factors that estimate dependency status. The calculator must, at a minimum, output the following:

- estimated total price of attendance;
- estimated tuition and fees;
- estimated room and board;
- estimated books and supplies;
- estimated other expenses (personal expenses, transportation, etc.);
- estimated total grant aid;
- estimated net price;
- percent of the cohort (full-time, first-time students) that received grant aid; and
- caveats and disclaimers, as indicated in HEOA.

Financial Aid Shopping Sheet

In July 2012, the federal government released a model financial aid award letter called the Financial Aid Shopping Sheet, which will standardize award letters, making it easier to comparison shop. The sheet includes the following key information:

- estimated cost of attendance per year;
- financial aid options, with a clear differentiation between grants and scholarships, which do not have to be repaid, and loans, which do;

- net cost of attendance after accounting for scholarships and loans;
- vital information about student results, including comparative information about default rates, graduation rates, and median debt levels for the school; and
- potential monthly payments for the federal student loans a typical student will owe after graduation.

Chapters 269 and 270 of 2014 require Maryland public institutions of higher education to provide all first-time, full-time undergraduate freshmen with information on the cost of higher education at the institution by completing and mailing or providing electronically, at a minimum, the information contained on the form known as the Financial Aid Shopping Sheet, as promulgated by the U.S. Department of Education. The shopping sheet or the information contained on the sheet must be mailed or provided electronically at the same time that an award of federal financial aid is sent to a student.

Private Career Schools and For-profit Colleges

As shown in **Exhibit 1**, in 2013 there were 147 private career schools in the State with approximately 26,437 students enrolled. The employment rate is recorded as 58%.

Exhibit 1
Private Career Schools in Maryland
2013 Annual Reports

| <u>School Type</u> ¹ | <u>No. of Schools</u> | <u>No. of Programs</u> | <u>Enrollment</u> | <u>Completion Rate</u> ² | <u>Employment Rate</u> ³ |
|---------------------------------|-----------------------|------------------------|-------------------|-------------------------------------|-------------------------------------|
| Allied Health | 49 | 76 | 9,570 | 80% | 54% |
| Computer | 5 | 25 | 571 | 80% | 53% |
| Cosmetology/Barber | 35 | 53 | 5,583 | 52% | 60% |
| Real Estate | 32 | 35 | 5,284 | 69% | N/A |
| Truck Driving/Mechanics | 4 | 14 | 2,641 | 70% | 62% |
| Other ⁴ | 22 | 54 | 2,788 | 73% | 59% |
| Total/Average | 147 | 257 | 26,437 | 71% | 58% |

¹ Some of the schools offer more than one type of program. Schools are categorized by the type of program with the majority of enrollment.

² Represents students enrolled from July 1, 2012, through June 30, 2013.

³ Total percent employed statewide does not include first-time pass rates for real estate or allied health.

⁴ Includes bartending, broadcasting, cooking, dog grooming, dry cleaning, finance, maritime studies, Montessori, mortgage, photography, polygraph, recording, travel, and trade schools.

Source: Maryland Higher Education Commission Private Career Schools Annual Reports for 2013

Exhibit 2 shows the head count enrollment for the 13 for-profit institutions of higher education located in Maryland in fall 2014. Not included are the out-of-state for-profit institutions that operate in Maryland but are required to register because they offer online courses to Maryland residents.

Exhibit 2
For-profit Two-year and Four-year Colleges and Universities Located in Maryland
Head Count, Fall 2014

| <u>Institution</u> | <u>Enrollment</u> |
|--|-------------------|
| Devry University – Maryland | 44 |
| Fortis College – Landover | 499 |
| Fortis Institute – Baltimore | 515 |
| International Beauty School | 116 |
| ITT Technical Institute – Hanover | 342 |
| ITT Technical Institute – Owings Mills | 555 |
| Kaplan University – Hagerstown Campus | 911 |
| Lincoln College of Technology – Columbia | 647 |
| Strayer University – Maryland | 2,873 |
| TESST College of Technology – Baltimore | 582 |
| TESST College of Technology – Beltsville | 388 |
| TESST College of Technology – Towson | 318 |
| University of Phoenix – Maryland | 460 |
| Total | 8,250 |

Source: National Center for Education Statistics; Integrated Postsecondary Education Data System

State Fiscal Effect: MHEC reports that the bill largely codifies existing practice. MHEC advises that it already facilitates the curriculum of all new programs by working with appropriate State licensing boards and expert consultants for programs that are not governed by State licensing boards.

MHEC advises that it already maintains a guaranty fund for private career schools. MHEC is authorized to create a guaranty fund for for-profit institutions but has not chosen to do so.

Small Business Effect: The bill’s impact on private career schools is likely minimal. However, guaranty fund fees may be increased due to the requirement that the fund provide a full refund of tuition and fees if a school closes; it is unknown how much fees for private career schools will need to increase to be able to do so. The cost to provide specified

students with the information contained on the form known as the Financial Aid Shopping Sheet is also unknown.

It is assumed that private career schools can make sure their net price calculators are posted in a conspicuous location using existing resources. Only private career schools that participate in the Title IV federal student aid programs and that enroll full-time, first-time degree- or certificate-seeking undergraduate students are required by the federal HEOA to post the net price calculator on their websites. Thus, not all private career schools are required to post the net price calculator.

Additional Comments: Under the bill, private nonprofit four-year institutions of higher education, for-profit institutions of higher education (those in the State as well as those that are required to register because they provide online courses to Maryland residents), and private career schools are required to provide all first-time full-time undergraduate students with, at a minimum, the information contained on the form known as the Financial Aid Shopping Sheet. For-profit institutions of higher education that operate in the State will need to post their net price calculators on their websites in a conspicuous location.

In addition, there is a potential minimal impact on for-profit institutions of higher education due to being charged assessments for the guaranty fund. The cost to for-profit institutions is unknown as MHEC will need to determine an assessment structure, but private career schools are currently assessed annually 0.25% of the school's adjusted gross tuition. The costs to provide specified students with the information contained on the form known as the Financial Aid Shopping Sheet is also unknown.

Additional Information

Prior Introductions: None.

Cross File: SB 427 (Senator Pinsky, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Higher Education Commission, Baltimore City Community College, University System of Maryland, Morgan State University, Maryland Independent College and University Association, Office of the Attorney General (Consumer Protection Division), National Center for Education Statistics, Integrated Postsecondary Education Data System, Department of Legislative Services

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