

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 446

(Senator Pinsky, *et al.*)

Education, Health, and Environmental Affairs

Appropriations

Institutions of Postsecondary Education – Disorderly School Closures

This bill requires institutions of postsecondary education and private career schools to meet specified requirements regarding school and program closures, including having close-out and teach-out agreements. To that end, schools and school leadership must meet specified financial and record transferring obligations. The bill establishes additional protections for any student who attends a program, school, or institution that closes related to tuition and fee reimbursement, student debt collection, transcripts, close-out agreements, and teach-out agreements. Violation of specified provisions of the bill is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: The Maryland Higher Education Commission (MHEC) can adopt the required regulations and receive close-out agreements using existing resources. To the extent that schools or programs close in a disorderly manner or enforcement is required, additional staff resources may be required. Public four-year institutions and Baltimore City Community College can file the required close-out agreements using existing resources. The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations.

Local Effect: Local community colleges can file close-out agreements using existing resources. The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: MHEC must adopt regulations to implement the various provisions of the bill.

A “disorderly closure” is defined in the bill as a cessation of educational instruction of a program in which (1) the institution did not provide a satisfactory amount of time, as determined by MHEC, for all Maryland students to complete the program; (2) the institution did not transition *all* Maryland students into another program at the institution; or (3) the institution did not enter into at least one school-to-school teach-out agreement.

Close-out Agreements

A school or institution must provide MHEC with a close-out agreement, which must be updated as required by MHEC. Under the bill, the agreement must state that:

- the institution will make all reasonable efforts to ensure that any closure of a program that enrolls Maryland students is not a disorderly closure;
- unless exempted by MHEC, specified leadership members of the institution never held specified leadership positions of an institution which disorderly closed; and
- any institutional financial aid agreement offered to a Maryland student must contain language stating that, in the event of disorderly closure, the institutional debt is void and may not be recovered, collected, or enforced.

School-to-school Teach-out Agreements

The bill establishes conditions that must be met for a school-to-school teach-out agreement. The closing institution must arrange the school-to-school teach-out agreement, which must be between an eligible transfer institution, the closing institution, and MHEC. Unless waived for good cause by MHEC, the transfer institution must meet specified conditions regarding location, transfer credits, credit hours required to complete a program, and tuition and fees charged the student. Finally, the agreement must specify that, on request by a Maryland student affected by the disorderly closure, the closing institution must provide a complete academic record and official transcript to the Maryland student at no cost to the Maryland student or the State.

Essential Records Closure Requirements

An institution must file all former students’ academic records, together with an affidavit of accuracy and completeness on behalf of specified officials of the institution, with MHEC prior to closure. Records include official transcripts, financial aid and account information

if requested by MHEC, and other academic information. This obligation may not be discharged in bankruptcy. In the case of an institutional closure that results in a merger, MHEC may approve a plan to file the essential records of all former students of the institution with the successor institution.

Transcripts – Students

If the records provided by the closing institution are missing, incomplete, or inaccessible, MHEC may issue a replacement transcript. This replacement transcript must be accepted as an official transcript by institutions operating in Maryland, including online distance education programs.

For purposes of student transfer, an institution of postsecondary education or a fully online distance education program in the State may consider an unofficial transcript or other transcript information provided by the student, as specified.

The regulations adopted by MHEC must contain specified information, including the circumstances under which an institution may discontinue operation, as necessary to implement these provisions of the bill.

Failure to File Essential Records – Refund Tuition and Fees

If an institution does not file all essential records, the Secretary of Higher Education may (1) require the institution to refund all tuition and fees paid by the former student whose records were not properly filed; (2) seek an injunction; or (3) employ other judicial remedies as provided in the Education Law Article (§ 11-107(a)).

Reimbursement Non-Title IV Tuition and Fees

An institution that closes one or more programs in a disorderly manner is in violation of the enrollment agreement or other contract with a student.

As specified, a Maryland student enrolled in an institution that disorderly closes is entitled to reimbursement from the performance bond or irrevocable letter of credit of all non-Title IV tuition and fees paid to the institutions. The reimbursement must be made to all Maryland students, including those who transfer to another institution.

Violations of the Maryland Consumer Protection Act

The bill establishes that it is an unfair, abusive, or deceptive trade practice of MCPA for any institution, person, or entity to collect on a Maryland student's institutional debt if the institutional financial aid agreement does not contain language stating that, in the event of

a disorderly closure, the institutional debt is void and may not be recovered. Likewise, an institution, person, or entity collecting such debt from a Maryland student who attended a program that disorderly closed is in violation of MCPA.

Current Law:

Maryland Consumer Protection Act

An unfair, abusive, 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, abusive, 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 within 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 \$10,000 for each violation and up to \$25,000 for each repetition of the same 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.

MHEC Remedies

MHEC may authorize the Secretary of Higher Education, acting through the Attorney General, to seek an injunction or other judicial remedy for any violation of Title 11 of the Education Article or of the rules and regulations adopted under Title 11.

If an institution of postsecondary education is required to have a certificate of approval from MHEC and is operating without a certificate of approval, the Secretary may (1) issue an order to cease and desist; (2) issue a notice of violation and impose a penalty of up to \$5,000; and (3) acting through the Attorney General, seek an injunction or other judicial remedy. The Secretary must consider specified factors in imposing a penalty. Should any institution of postsecondary education (that is required to have MHEC approval before offering a program) offer an unapproved program, the Secretary may require the institution to refund all tuition and fees paid by students who enrolled in the program. The Secretary

may also revoke the certificate of approval of any institution that fails to make a required refund within the time specified by the Secretary.

Background: According to a [list](#) maintained by MHEC, 12 private career schools in the State have closed since January 2013, and at least some of the schools appear to have closed in a disorderly manner. MHEC's website lists close-out information for these schools including teach-out, refund, and transcript information when available. In addition, MHEC maintains a [list](#) of schools for which it has at least some student records.

According to MHEC, as of January 2020, there were 140 private career schools in the State, 7 for-profit institutions approved to operate in Maryland, and 14 for-profit institutions required to register.

Small Business Effect: Many private career schools are small businesses. Private career schools must meet the requirements of the bill, including filing a close-out agreement, arranging teach-out agreements, and meeting specified financial obligations. Private career schools close more often than other postsecondary institutions of higher education and, thus, may be more affected by the requirements of the bill.

Additional Comments: The bill specifies that all judgments paid to the Education Trust Fund under § 11-210 of the Education Article (which is newly created by the bill) are to be credited to that fund. However, as there are no such judgments paid to the fund under the bill, this analysis does not reflect additional revenues for the Education Trust Fund.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 469 (Delegate Hettleman, *et al.*) - Appropriations.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Higher Education Commission; Department of Legislative Services

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