

HOUSE BILL 1435

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9lr0163

By: **Chair, Appropriations Committee (By Request – Departmental – Higher Education Commission)**

Introduced and read first time: February 26, 2009

Assigned to: Rules and Executive Nominations

Re-referred to: Appropriations, March 2, 2009

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 31, 2009

CHAPTER _____

1 AN ACT concerning

2 **Higher Education – Enforcement Powers of Maryland Higher Education**
3 **Commission and Secretary of Higher Education**

4 FOR the purpose of authorizing the Secretary of Higher Education to issue certain
5 cease and desist orders and notices of violation, impose certain penalties, and
6 seek certain relief for certain violations by an institution of postsecondary
7 education; authorizing the Secretary to order that certain tuition payments and
8 certain fees be returned to certain students under certain circumstances;
9 requiring the Secretary to consider certain matters before imposing certain
10 sanctions; authorizing the Maryland Higher Education Commission to
11 summarily revoke or suspend the certificate of approval of certain private
12 career schools under certain conditions; ~~authorizing the Commission to~~
13 ~~establish certain regulations;~~ altering the authority of the Commission to limit
14 the issues to be determined in a certain hearing; and generally relating to the
15 enforcement powers of the Secretary of Higher Education and the Maryland
16 Higher Education Commission.

17 BY repealing and reenacting, with amendments,
18 Article – Education
19 Section 11–107 and 11–205
20 Annotated Code of Maryland
21 (2008 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

3 **Article – Education**

4 11–107.

5 (a) The Commission may authorize the Secretary, acting through the
6 Attorney General, to seek an injunction or other judicial remedy for any violation of
7 this title or of the rules and regulations adopted under this title.

8 **(B) (1) IF AN INSTITUTION OF POSTSECONDARY EDUCATION IS**
9 **REQUIRED TO HAVE A CERTIFICATE OF APPROVAL FROM THE COMMISSION AND**
10 **IS OPERATING WITHOUT A CERTIFICATE OF APPROVAL, THE SECRETARY MAY:**

11 **(I) ISSUE AN ORDER TO CEASE AND DESIST;**

12 **(II) ISSUE A NOTICE OF VIOLATION AND IMPOSE A PENALTY**
13 **OF UP TO \$5,000; AND**

14 **(III) ACTING THROUGH THE ATTORNEY GENERAL, SEEK AN**
15 **INJUNCTION OR OTHER JUDICIAL REMEDY.**

16 **(2) IN IMPOSING A PENALTY UNDER THIS SUBSECTION, THE**
17 **SECRETARY SHALL CONSIDER:**

18 **(I) THE SERIOUSNESS OF THE VIOLATION;**

19 **(II) THE HARM CAUSED BY THE VIOLATION;**

20 **(III) THE GOOD FAITH OF THE INSTITUTION AND ANY**
21 **CORRECTIVE ACTIONS TAKEN;**

22 **(IV) ANY HISTORY OF PREVIOUS VIOLATIONS; AND**

23 **(V) OTHER PERTINENT CIRCUMSTANCES.**

24 **[(b)] (C) [The] FOR ANY INSTITUTION OF POSTSECONDARY EDUCATION**
25 **REQUIRED TO HAVE COMMISSION APPROVAL BEFORE OFFERING A PROGRAM, IF**
26 **THE INSTITUTION OFFERS AN UNAPPROVED PROGRAM, THE** Secretary may
27 require [any private career school offering unapproved programs] **THE INSTITUTION**
28 to refund all tuition and fees paid by students who enrolled in [such programs,] **THE**
29 **PROGRAM,** and may revoke the certificate of approval of any [private career school]
30 **INSTITUTION** that fails to make a required refund within the time specified by the
31 Secretary.

1 [(c)] (D) The remedies provided in this section are in addition to any other
2 remedies provided by law.

3 11-205.

4 (a) The Commission may summarily order the revocation or suspension of a
5 certificate of approval of a private career school if:

6 (1) The school's owner or director, or any person in whose name the
7 approval is issued, is convicted of a crime of moral turpitude or a crime relating to the
8 operation of the school if:

9 (i) The conviction is final; and

10 (ii) The period for appeal has expired; [or]

11 (2) An agency that exercises concurrent authority over the private
12 career school has revoked any approval to operate required by law; **OR**

13 ~~(3) THE SCHOOL'S CERTIFICATE OF APPROVAL IS SUBJECT TO~~
14 ~~SUMMARY REVOCATION OR SUSPENSION ON ANY OTHER GROUND ESTABLISHED~~
15 ~~BY THE COMMISSION.~~

16 **(3) WITHOUT PRIOR APPROVAL OF THE COMMISSION, THE**
17 **CERTIFICATE OF APPROVAL OF A SCHOOL IS SOLD, PLEDGED, OR**
18 **TRANSFERRED, OR THERE IS A CHANGE OF OWNERSHIP OF A SCHOOL.**

19 (b) The Commission may summarily order a revocation or suspension of a
20 certificate of approval of a private career school under subsection (a) of this section
21 only if it gives the school:

22 (1) Prior oral or written notice of the proposed revocation or
23 suspension and a brief, informal opportunity for response;

24 (2) Prior or prompt subsequent written notice of the revocation or
25 suspension and the findings on which the revocation or suspension is based; and

26 (3) After the revocation or suspension is effective, an opportunity to be
27 heard promptly before the Commission.

28 (c) (1) In any hearing held on the grounds for revocation under subsection
29 (a) of this section, the Commission may limit the issues to be determined to whether:

30 (i) The alleged conviction in fact occurred; ~~or~~

31 (ii) The alleged revocation under subsection (a)(2) of this section
32 in fact occurred; **OR**

1 (III) THE ALLEGED SALE, PLEDGE, OR TRANSFER, OR
2 CHANGE OF OWNERSHIP OF THE PRIVATE CAREER SCHOOL IN FACT OCCURRED.

3 (2) Notwithstanding paragraph (1) of this subsection, in any hearing
4 held on the grounds for revocation under subsection (a) of this section, a private career
5 school may present matters in mitigation of the offense alleged by the Commission.

6 ~~(D) THE COMMISSION MAY ADOPT REGULATIONS THAT ESTABLISH~~
7 ~~OTHER GROUNDS FOR SUMMARY REVOCATION OR SUSPENSION OF A~~
8 ~~CERTIFICATE OF APPROVAL OF A PRIVATE CAREER SCHOOL.~~

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2009.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.