

## CHAPTER 465

(House Bill 1435)

AN ACT concerning

### **Higher Education – Enforcement Powers of Maryland Higher Education Commission and Secretary of Higher Education**

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

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

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

#### **Article – Education**

11–107.

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

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

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

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

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

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

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

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

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

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

**(V) OTHER PERTINENT CIRCUMSTANCES.**

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

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

11-205.

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

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

(i) The conviction is final; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Approved by the Governor, May 7, 2009.**