

**Department of Legislative Services**  
Maryland General Assembly  
2009 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 1435

(Chair, Appropriations Committee)(By Request -  
Departmental - Higher Education Commission)

Appropriations

Education, Health, and Environmental Affairs

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**Higher Education - Enforcement Powers of Maryland Higher Education  
Commission and Secretary of Higher Education**

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This departmental bill authorizes the Secretary of the Maryland Higher Education Commission (MHEC) to issue a cease and desist order, issue a notice of violation, and impose a penalty of up to \$5,000 to an institution of postsecondary education operating without a required certificate of approval. Acting through the Attorney General, the Secretary may seek an injunction or other judicial remedy against such institutions.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in revenues due to the bill's penalty provision. No effect on expenditures.

**Local Effect:** None.

**Small Business Effect:** MHEC has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

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**Analysis**

**Bill Summary:** In imposing a penalty, the Secretary is required to consider the seriousness of the violation, the harm caused by the violation, the good faith of the institution and any corrective actions taken, any history of previous violations, and other pertinent circumstances.

The Secretary may require any institution of postsecondary education, which is required to have MHEC approval before offering a program, that offers unapproved programs to refund all tuition and fees paid by students 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.

MHEC may revoke or suspend a private career school's certificate of approval if the certificate of approval is sold, pledged, or transferred without prior approval from MHEC or there is a change of ownership of a school.

In addition to issues currently allowed, MHEC may limit its hearings on the revocation or suspension of a private career school's certificate of approval to whether the alleged sale, pledge, or transfer, or change of ownership of a private career school, in fact occurred.

**Current Law:** In addition to any other remedies provided by law, MHEC may authorize the Secretary, acting through the Attorney General, to seek an injunction or other judicial remedy against private career schools that violate the law. The Secretary may require any private career school offering unapproved programs to refund all tuition and fees paid by students enrolled in the program. The Secretary may also revoke the certificate of approval of any private career school that fails to make a required refund within the time specified by the Secretary.

MHEC may order the revocation or suspension of the certificate of approval of a private career school if (1) the person to whom the certificate of approval was issued is convicted of a crime of moral turpitude and the conviction is final and the period for appeal has expired; or (2) an agency that exercises concurrent authority over the school has revoked any approval to operate required by law.

To revoke or suspend the certificate of approval, MHEC must first give a school prior notice and an informal opportunity for response. MHEC is then required to give prior or prompt subsequent written notice of the revocation or suspension, and the reasons behind an action. After the revocation or suspension is effective, a private career school must be given an opportunity to be heard promptly before MHEC.

MHEC may limit its hearing on the revocation or suspension of a certificate of approval of a private career school to determine whether the person issued the certificate of approval was in fact convicted of a crime of moral turpitude or whether the certificate of approval was in fact revoked. The private career school may present matters in mitigation of the offense alleged by MHEC.

If the institution of postsecondary education is not a private career school, MHEC only has the authority to file a lawsuit against the institution to stop a violation of the law.

Institutions of postsecondary education are schools or other institutions that offer an educational program in the State for individuals who are at least 16 years old and have graduated or left secondary school. They include two- and four-year public and private institutions and private career schools, but do not include adult education or high school equivalency programs or on-the-job training or apprenticeship programs subject to approval by the Apprenticeship and Training Council.

**Background:** MHEC advises that its current limited enforcement powers, consisting primarily of the authority to file a lawsuit to stop a violation, are insufficient to protect students from violations of the law by institutions of postsecondary education. MHEC advises the bill will increase its ability to protect students from unapproved schools and programs, whether it is a private career school or a degree-granting institution.

**Additional Comments:** The Maryland Independent College and University Association advises that there will be no fiscal impact on members of its association.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore City Community College, Maryland Higher Education Commission, Maryland Independent College and University Association, Judiciary (Administrative Office of the Courts), Morgan State University, University System of Maryland, Department of Legislative Services

**Fiscal Note History:** First Reader - March 11, 2009  
ncs/rhh Revised - House Third Reader - April 9, 2009

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Higher Education – Enforcement Powers of Maryland Higher Education Commission and Secretary of Higher Education

BILL NUMBER: HB 1435

PREPARED BY: Maryland Higher Education Commission

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND  
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND  
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.