

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 91 (Chair, Education, Health, and Environmental Affairs
Committee)(By Request - Departmental - Higher
Education Commission)

Education, Health, and Environmental Affairs

Appropriations

Maryland Higher Education Commission - Exempt Institutions

This departmental bill prohibits a person from making a verbal or written statement that an institution of postsecondary education operating without a certificate of approval issued by the Maryland Higher Education Commission (MHEC) is approved by, or has a certificate of approval from, MHEC. In addition, a person may not enroll a student in the institution unless the person gives written notice that the student acknowledges certain limitations of the instructional program. A violator is subject to a fine of up to \$5,000 for each violation.

The bill takes effect June 1, 2010.

Fiscal Summary

State Effect: Minimal increase in general fund 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.

Analysis

Bill Summary: The written acknowledgement obtained from a student must be in a form approved by MHEC, signed by both the student and a representative of the institution, and permanently retained in the student's file by the institution.

The written notice must acknowledge that the institution's instructional program is only designed for people seeking to learn about the particular religious faith; an institution of higher education is not required to accept credits earned at the institution for transfer; an institution of higher education is not required to recognize an award earned at the institution; and a potential employer may determine that an award earned at the institution does not meet minimum educational requirements.

Current Law: Most postsecondary education institutions must obtain a certificate of approval from MHEC before they are allowed to operate in the State. However, certain institutions are exempt from obtaining a certificate of approval from MHEC. These institutions are either under charter from the General Assembly or religious institutions meeting certain qualifications. MHEC grants a certificate of approval exemption after an institution demonstrates it meets the requirements to qualify for an exemption.

Background: MHEC has received numerous complaints from students as a result of several exempt institutions improperly referring to or advertising their exempt status. In some cases, institutions advertise the exemption as approval by MHEC, and in others, institutions simply advertise the exemption. In particular, the representation that an institution has been approved by MHEC when it has not is extremely misleading to students. An exempt institution does not undergo review of its programs, facilities, and resources, as does an approved institution.

In response to these complaints, Senate Bill 72 of 2009 would have prohibited an institution of postsecondary education that may operate without a certificate of approval issued by MHEC from making reference to its approval or exemption from approval on any certificate, diploma, academic transcript or other document; in advertisements or publications; or on a web site. In addition, a violator would have been subject to a fine of up to \$5,000 for each violation. Senate Bill 72 was passed by the General Assembly, but was vetoed by the Governor based on advice from the Attorney General that provisions of the bill presented an unconstitutional restraint on truthful commercial speech and, therefore, violated both the First Amendment of the United States Constitution and Article 40 of the Maryland Declaration of Rights. MHEC advises that this bill (SB 91 of 2010) addresses the First Amendment issue by specifically prohibiting an institution from stating that it is approved by MHEC; therefore, it prohibits only false statements.

Additional Information

Prior Introductions: A similar bill, SB 72 of 2009 passed both houses but was vetoed by the Governor.

Cross File: None.

Information Source(s): Maryland Higher Education Commission, Maryland Independent College and University Association, University System of Maryland, Department of Legislative Services

Fiscal Note History: First Reader - January 18, 2010
mam/rhh

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Maryland Higher Education Commission – Exempt Institutions

BILL NUMBER: SB 91

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.