# Department of Legislative Services
Maryland General Assembly
2020 Session

## FISCAL AND POLICY NOTE
**First Reader**

House Bill 470 (Delegate Hettleman, *et al.*)
Appropriations

**For-Profit Institutions of Higher Education and Private Career Schools - Instructional Spending - Requirements**

This bill requires, beginning in fiscal 2023, specified for-profit institutions of higher education and private career schools to have spent at least 50% of their *tuition revenue* on instructional spending during the previous academic year in order to maintain their certificate of approval to operate in Maryland or enroll Maryland students in an online program. If an institution fails to meet that standard, it must (1) submit a corrective action plan; (2) charge limited tuition to Maryland students the following year; and (3) provide tuition refunds to specified Maryland students. Violation 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:** General fund expenditures increase by $37,700 in FY 2021 for staff. The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations, and the Office of the Attorney General, Consumer Protection Division, can handle additional workload due to the bill with existing resources.

| (in dollars) | FY 2021 | FY 2022 | FY 2023 | FY 2024 | FY 2025 |
|---|---|---|---|---|---|
| Revenues | $0 | $0 | $0 | $0 | $0 |
| GF Expenditure | 37,700 | 42,600 | 43,400 | 45,000 | 46,500 |
| Net Effect | ($37,700) | ($42,600) | ($43,400) | ($45,000) | ($46,500) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

**Local Effect:** 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:** The bill specifies that certain for-profit institutions of higher education and private career school must comply with the bill. The bill does not apply to an institution that, during the immediately preceding academic year, did not receive federal or State funds to pay for students' tuition or fees or did not charge a Maryland student an amount in excess of the maximum award from a federal Pell Grant.

Specifically, a school or institution that fails to use at least 50% of its tuition revenue on instructional spending during the preceding fiscal year must submit a corrective action plan to the Maryland Higher Education Commission (MHEC) detailing the steps that it will take to use at least 50% of its tuition *and fee* revenue on instructional spending in the immediately following academic year. In addition, a school may not charge a Maryland student who enrolls in classes for the immediately following academic year an amount of tuition, fees, or other institutional charges in excess of two times the amount spent per student on instructional spending in the immediately preceding academic year. Finally, the institution must provide a refund to each Maryland student who attended the institution during the immediately preceding academic year equal to the amount of tuition charged to the Maryland student in excess of the instructional spending per student amount multiplied by two.

Specified schools and institutions must report specified financial information by June 30 each year. By August 31 each year, MHEC must publish on its website (1) the information reported by the schools and institutions; (2) if applicable, the maximum tuition that may be charged by an institution that failed to meet the requirements of the bill; and (3) if applicable, a corrective action plan provided by an institution.

By January 1, 2021, MHEC must adopt regulations to implement the bill.

**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 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.

**Background:** 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.

**State Expenditures:** MHEC advises it needs an additional full-time education specialist to analyze the required financial information and to post the required information on MHEC's website. MHEC further advises that analyzing the financial information will be particularly labor intensive. Specifically, some institutions charge different tuition for different programs, so calculating tuition and fee revenue and applicable instructional spending may have to be broken down by program. Additionally, there is no definition for "instructional spending" in the integrated postsecondary education data system; thus, MHEC may need to work with each institution individually. Finally, since the bill references both "tuition" and "tuition and fees" calculations may be more labor intensive.

The Department of Legislative Services agrees that MHEC cannot absorb these additional duties with existing resources; nevertheless, a full-time specialist is likely not needed. Thus, general fund expenditures increase by $37,719 in fiscal 2021 for a half-time education specialist, which accounts for a 90-day start-up delay. The specialist can develop regulations and then support the reporting requirement (which begins June 30, 2021). This estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | |
|---|---|
| Position | 0.5 |
| Salary and Fringe Benefits | $32,590 |
| Start-up and Operating Expenses | 5,129 |
| **Total FY 2021 State Expenditures** | **$37,719** |

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

**Small Business Effect:** Many private career schools are small businesses. To the extent that a private career school is unable to operate or enroll new Maryland residents due to the requirements of the bill, a private career school may need to redirect spending to "instructional spending" or potentially close. It is unknown how many schools this bill will impact; however, it could be significant.

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## Additional Information

**Prior Introductions:** None.

**Designated Cross File:** SB 445 (Senator Pinsky, *et al.*) - Education, Health, and Environmental Affairs.

**Information Source(s):** Maryland Higher Education Commission; Department of Legislative Services

**Fiscal Note History:** First Reader - February 11, 2020
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