

May 19, 2009

The Honorable Thomas V. Mike Miller, Jr.  
President of the Senate  
State House  
Annapolis, MD 21401

Dear Mr. President:

In accordance with Article II, Section 17 of the Maryland Constitution, today I have vetoed Senate Bill 72 – *Higher Education – Institutions of Postsecondary Education – Exempt Institutions*.

Senate Bill 72 prohibits an institution of postsecondary education that may operate without a certificate of approval issued by the Maryland Higher Education Commission (MHEC) from making reference to its approval or exemption from approval on any certificate, diploma, academic transcript or in advertisements, publications, or on a web site. A violator is subject to a fine of up to \$5,000 for each violation.

This legislation is designed to protect Maryland students by prohibiting organizations that are exempt from accreditation by MHEC from making a reference to that exemption in diplomas or other documents. The State has received numerous complaints from students that some institutions are misleading students by advertising their exemption as approval of the program by MHEC. Institutions that are exempt do not undergo review of their programs by MHEC and do not have accreditation.

While I support the intent of Senate Bill 72, the Attorney General informed me in a letter dated May 15, 2009, that in his view, the legislation “presents an unconstitutional restraint on truthful commercial speech” in violation of the First Amendment of the United States Constitution. In the Attorney General’s view, the legislation not only prohibits misleading advertising by exempt institutions, it also prohibits truthful advertising in violation of the First Amendment. The Attorney General further stated in his letter that if signed into law, the prohibition against truthful advertising, even if not enforced, “would unconstitutionally chill the free speech rights of these exempt institutions.” As a result, the Attorney General recommended the bill not become law.

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Based on the Attorney General's opinion, I have vetoed Senate Bill 72. Legislation can be adopted next year that provides the necessary protection for students while still meeting the Constitutional standards for commercial free speech.

Sincerely,

Martin O'Malley

Governor