



# Senate

General Assembly

**File No. 591**

January Session, 2007

Substitute Senate Bill No. 1139

*Senate, April 26, 2007*

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING ENHANCED ENFORCEMENT AUTHORITY BY THE DEPARTMENT OF HIGHER EDUCATION.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 10a-34 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective January 1, 2008*):

3 (a) For the purposes of this section, "program of higher learning"  
4 means any course of instruction for which it is stated or implied that  
5 college or university-level credit may be given or may be received by  
6 transfer; "degree" means any letters or words, diploma, certificate or  
7 other symbol or document which signifies satisfactory completion of  
8 the requirements of a program of higher learning; "institution of higher  
9 learning" means any person, school, board, association, limited liability  
10 company or corporation which is licensed or accredited to offer one or  
11 more programs of higher learning leading to one or more degrees;  
12 "license" means the authorization by the Board of Governors of Higher  
13 Education to operate a program or institution of higher learning for a  
14 specified initial period; "accreditation" means the authorization by said

15 board to continue operating a program or institution of higher learning  
16 for subsequent periods, and in such periods to confer specified  
17 degrees.

18 (b) The Board of Governors of Higher Education shall establish  
19 regulations concerning the requirements for licensure and  
20 accreditation, such regulations to concern administration, finance,  
21 faculty, curricula, library, student admission and graduation, plant and  
22 equipment, records, catalogs, program announcements and any other  
23 criteria pertinent thereto, as well as the periods for which licensure and  
24 accreditation may be granted, and the costs and procedures of  
25 evaluations as provided in subsections (c) and (d) [below] of this  
26 section. Said board may establish an advisory council for accreditation  
27 composed of representatives of public and private institutions of  
28 higher learning and the public at large to advise the board regarding  
29 existing or proposed regulations.

30 (c) No person, school, board, association or corporation shall confer  
31 any degree unless authorized by act of the General Assembly. No  
32 application for authority to confer any such degree shall be approved  
33 by the General Assembly or any committee thereof, nor shall any such  
34 authority be included in any charter of incorporation until such  
35 application has been evaluated and approved by the Board of  
36 Governors of Higher Education in accordance with regulations  
37 established by said board.

38 (d) No person, school, board, association or corporation shall  
39 operate a program or institution of higher learning unless it has been  
40 licensed or accredited by the Board of Governors of Higher Education,  
41 nor shall it confer any degree unless it has been accredited in  
42 accordance with this section. The board shall not grant any new license  
43 or accreditation until it has received a report of an evaluation of such  
44 program or institution by competent educators approved by the board.  
45 The Board of Governors of Higher Education shall accept regional or,  
46 where appropriate, national accreditation, in satisfaction of the  
47 requirements of this subsection unless the board finds cause not to rely

48 upon such accreditation.

49 (e) No person, school, board, association or corporation shall use in  
50 any way the term "junior college" or "college" or "university" or use  
51 any other name, title, literature, catalogs, pamphlets or descriptive  
52 matter tending to designate that it is an institution of higher learning,  
53 or that it may grant academic or professional degrees, unless the  
54 institution possesses a license from, or has been accredited by, the  
55 board, nor shall offer any program of higher learning without  
56 approval of the Board of Governors of Higher Education.

57 (f) Accreditation of any program or institution or authority to award  
58 degrees granted in accordance with law prior to July 1, 1965, shall  
59 continue in effect.

60 [(g) Any person, school, board, association or corporation violating  
61 any provision of this section shall be fined not more than one thousand  
62 dollars.]

63 [(h)] (g) If an existing institution, adversely affected by this section,  
64 applies to the board for licensure or accreditation, said board may  
65 grant licensure on a temporary basis to expire within one year and  
66 renewable from year to year, if, in the judgment of the board,  
67 reasonable progress is being made by such institution toward meeting  
68 the standards required by regulations of the board.

69 Sec. 2. (NEW) (*Effective January 1, 2008*) (a) The Commissioner of  
70 Higher Education may assess any person, school, board, association or  
71 corporation which violates any provision of section 10a-34 of the  
72 general statutes, as amended by this act, or section 10a-35 of the  
73 general statutes an administrative penalty in an amount not to exceed  
74 five hundred dollars for each day of such violation.

75 (b) (1) The Commissioner of Higher Education shall serve written  
76 notice upon the person, school, board, association or corporation when  
77 the assessment of such an administrative penalty is under  
78 consideration. The notice shall set forth the reasons for the assessment

79 of the penalty.

80 (2) Not later than seven days after receipt of notice pursuant to  
81 subdivision (1) of this subsection, the person, school, board, association  
82 or corporation may file a written request for administrative review by  
83 the commissioner or the commissioner's designee. If no request is filed,  
84 the commissioner or the commissioner's designee shall schedule a  
85 compliance conference pursuant to subdivision (6) of this subsection.

86 (3) Not later than forty-five days after the commissioner or the  
87 commissioner's designee receives a request for review pursuant to  
88 subdivision (2) of this subsection, the commissioner or the  
89 commissioner's designee shall complete an administrative review and  
90 give written notice of the determination of the review to such person,  
91 school, board, association or corporation. If the commissioner or  
92 commissioner's designee determines after such review that a violation  
93 of sections 10a-34 of the general statutes, as amended by this act, or  
94 10a-35 of the general statutes occurs, the commissioner or  
95 commissioner's designee shall schedule a compliance conference  
96 pursuant to subdivision (6) of this subsection.

97 (4) Not later than fourteen days after such person, school, board,  
98 association or corporation receives notice of the determination that a  
99 violation occurred pursuant to subdivision (3) of this subsection, the  
100 person, school, board, association or corporation may appeal in  
101 writing to the Board of Governors of Higher Education, setting forth  
102 the reasons why the penalty is not proper.

103 (5) Not later than twenty business days after the board of governors  
104 receives the request for an appeal pursuant to subdivision (4) of this  
105 subsection, the board of governors shall hold a hearing which shall be  
106 conducted pursuant to the provisions of chapter 54 of the general  
107 statutes and provide notice of the decision.

108 (6) (A) If no administrative review is requested, not later than forty-  
109 five days after the commissioner or the commissioner's designee mails  
110 notice pursuant to subdivision (1) of this subsection to such person,

111 school, board, association or corporation, the commissioner or the  
112 commissioner's designee shall hold a compliance conference with such  
113 person, school, board, association or corporation.

114 (B) If an administrative review is requested and if after an appeal  
115 pursuant to subdivision (4) is made and a determination is made  
116 pursuant to subdivision (3) of this subsection that (i) a violation  
117 occurred, not later than forty-five days after the commissioner or the  
118 commissioner's designee mails notice pursuant to subdivision (1) of  
119 this subsection to such person, school, board, association or  
120 corporation, the commissioner or the commissioner's designee shall  
121 hold a compliance conference with such person, school, board,  
122 association or corporation, or (ii) a violation did not occur, not later  
123 than forty-five days after the commissioner or the commissioner's  
124 designee mails notice pursuant to subdivision (1) of this subsection to  
125 such person, school, board, association or corporation, the  
126 commissioner or the commissioner's designee shall notify such person,  
127 school, board, association or corporation of the decision of compliance.

128 (c) If, after the compliance conference pursuant to subsection (b) of  
129 this section, the commissioner determines that imposition of the  
130 administrative penalty is appropriate, the commissioner shall issue an  
131 order and serve written notice by certified mail, return receipt  
132 requested upon the person, school, board, association or corporation.

133 (d) The person, school, board, association or corporation aggrieved  
134 by the order of the commissioner imposing an administrative penalty  
135 pursuant to subsection (c) of this section shall, not later than fifteen  
136 days after such order is mailed, request, in writing, a hearing before  
137 the Board of Governors of Higher Education. Such hearing shall be  
138 held in accordance with the provisions of chapter 54 of the general  
139 statutes.

140 Sec. 3. (NEW) (*Effective January 1, 2008*) The Commissioner of Higher  
141 Education, through the Attorney General, may seek an order from the  
142 superior court to prevent any violation of section 10a-34 of the general  
143 statutes, as amended by this act, and section 10a-35 of the general

144 statutes through the use of an injunction in accordance with the  
145 provisions of chapter 916 of the general statutes.

146 Sec. 4. (NEW) (*Effective January 1, 2008*) The Commissioner of Higher  
147 Education, or the commissioner's designee, may conduct an  
148 investigation and, through the Attorney General, maintain an action in  
149 the name of the state against any person, school, board, association or  
150 corporation to restrain or prevent the establishment or operation of an  
151 institution that is not licensed, accredited or authorized to award  
152 degrees by the Board of Governors of Higher Education pursuant to  
153 the provisions of section 10a-34 of the general statutes, as amended by  
154 this act.

155 Sec. 5. (NEW) (*Effective January 1, 2008*) The Board of Governors of  
156 Higher Education or the Commissioner of Higher Education, through  
157 the Attorney General, may petition the superior court for the judicial  
158 district of Hartford for the enforcement of any order issued by the  
159 board or the commissioner, and for other appropriate relief. The court  
160 may issue such orders as are appropriate to aid in enforcement.

161 Sec. 6. (NEW) (*Effective January 1, 2008*) The Commissioner of Higher  
162 Education, or the commissioner's designee, may conduct any necessary  
163 review, inspection or investigation regarding applications for licensure  
164 or accreditation or possible violations of section 10a-34 of the general  
165 statutes, as amended by this act, and sections 2 to 6, inclusive, of this  
166 act or of any applicable regulations of Connecticut state agencies. In  
167 connection with any investigation, the commissioner or the  
168 commissioner's designee, may administer oaths, issue subpoenas,  
169 compel testimony and order the production of any record or  
170 document. If any person refuses to appear, testify or produce any  
171 record or document when so ordered, the commissioner may seek  
172 relief pursuant to section 5 of this act.

173 Sec. 7. (NEW) (*Effective July 1, 2007*) The Board of Governors of  
174 Higher Education shall adopt regulations in accordance with the  
175 provisions of chapter 54 of the general statutes in order to carry out the  
176 provisions of sections 2 to 6, inclusive, of this act.



The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

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### **OFA Fiscal Note**

#### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 08 \$</b>	<b>FY 09 \$</b>
Higher Ed., Dept.	GF - Revenue Gain	Minimal	Minimal
Higher Ed., Dept.	GF - Cost	Potential Minimal	Potential Minimal
Attorney General	GF - None	None	None

Note: GF=General Fund

**Municipal Impact:** None

#### **Explanation**

The bill allows the Department of Higher Education (DHE) to assess an increased administrative penalty, of \$500 per day, against any institution of higher education (or an institution conferring academic or professional degrees) without a license or accreditation from the Board of Governors of Higher Education. The increased penalty could result in a minimal revenue gain to DHE as it is estimated there will be fewer than 10 instances annually where schools are operating without the proper licensure or accreditation. Under current law, the penalty for such a violation is \$1,000.

Additionally, the bill allows DHE, acting through the Attorney General, to ask the Hartford Superior Court to issue an injunction to prevent violations of the licensure and accreditation law and the bill's provisions. The Attorney General could perform its duties under the bill without requiring additional staff. Any litigation expenses (e.g., expert witness fees, court fees) to enforce provisions of the bill would be passed on to DHE. These potential costs are anticipated to be minimal.

The bill makes various other changes that are not anticipated to

result in a fiscal impact.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to the rate of violations.

**OLR Bill Analysis****sSB 1139*****AN ACT CONCERNING ENHANCED ENFORCEMENT AUTHORITY  
BY THE DEPARTMENT OF HIGHER EDUCATION.*****SUMMARY:**

The bill eliminates a criminal penalty of \$1,000 per violation and establishes an administrative penalty of \$500 per day for any institution operating a higher education institution or conferring academic or professional degrees without a license or accreditation from the Board of Governors of Higher Education. The bill transfers, from the board of governors to the higher education commissioner, authority to assess the penalty and establishes procedures under which the commissioner imposes the penalty and enforces the licensure and accreditation law. The bill also requires the board of governors to adopt implementing regulations.

**EFFECTIVE DATE:** January 1, 2008, except for the requirement to adopt regulations, which is effective on July 1, 2007.

**PENALTY PROCESS**

The bill requires the commissioner to notify the institution in writing that the penalty is being considered and why. The institution can, within seven calendar days of receiving notice, ask the commissioner or designee for an administrative review. If the institution does not ask for an administrative review, the bill requires the commissioner to hold a compliance conference with the institution within 45 calendar days of sending the initial notice.

If the institution requests a review, the commissioner or designee must complete the review and notify the institution in writing of the conclusions within 45 calendar days of this request. Then the

institution has 14 calendar days to appeal the commissioner's decision in writing to the board of governors. The board has 20 business days after it receives the appeal request to hold the hearing and make a decision. The review and appeal process can take up to 94 calendar days.

If the commissioner's administrative review and the board of governors' hearing, if requested, conclude that a violation occurred, the commissioner or designee must hold a compliance conference with the institution within 45 calendar days of the initial penalty notice (See COMMENT). If the board finds that no violation occurred, the commissioner or her designee must notify the institution that they are in compliance within 45 calendar days of the initial penalty notice.

If, after the compliance conference, the commissioner determines to impose an administrative penalty, the commissioner may issue an order and notify the institution by certified mail, return receipt requested. The school then has 15 calendar days to ask the board of governors for a hearing on the penalty, which must be held in accordance with the Uniform Administrative Procedure Act.

### **COURT ENFORCEMENT**

The bill authorizes the commissioner, acting through the attorney general, to ask the Hartford Superior Court to issue an injunction to prevent violations of the licensure and accreditation law and the bill's provisions. It allows the board of governors and the commissioner, through the attorney general, to ask the Hartford Superior Court to enforce any order they issue and for other appropriate relief. It permits the court to issue such orders.

The bill also authorizes the commissioner or designee to:

1. review, inspect, or investigate, as needed, applications for licensure or accreditation for possible violations of licensure and accreditation law or any applicable agency regulations;
2. investigate and, through the attorney general, seek a court order

to restrain or prevent the establishment or operation of an institution that is not licensed, accredited, or authorized by the board of governors to issue degrees; and

3. issue subpoenas, place people under oath, compel testimony, and order records and documents to be produced.

It also permits the commissioner to ask the attorney general to seek a court order if anyone refuses to appear, testify, or produce documents.

## COMMENT

### *Penalty Process Timeline*

The bill requires the commissioner or designee to hold a compliance conference within 45 calendar days of the initial penalty notice, but the administrative review and appeal process can take up to 94 calendar days.

## COMMITTEE ACTION

Higher Education and Employment Advancement Committee

Joint Favorable Substitute Change of Reference  
 Yea 18 Nay 0 (03/13/2007)

Judiciary Committee

Joint Favorable  
 Yea 37 Nay 2 (04/11/2007)