

**Substitute for HOUSE BILL No. 2493**

By Committee on Higher Education

1-29

10 AN ACT relating to education; concerning private and postsecondary  
11 institutions; repealing K.S.A. 72-4916, 72-4919, 72-4920, 72-4921, 72-  
12 4922, 72-4924 through 72-4937, inclusive, 72-4939, 72-4940 and 74-  
13 3249 through 74-3253, inclusive and K.S.A. 2003 Supp. 72-4938.

14

15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. This act shall be known and may be cited as the “Kansas  
17 private and foreign postsecondary institution act.”

18 Sec. 2. As used in this act:

19 (a) “Academic degree” means any associate, bachelor’s, first profes-  
20 sional, master’s, intermediate (specialist) or doctor’s degree.

21 (b) “Accreditation” refers to accreditation by an agency recognized  
22 by the United States department of education.

23 (c) “Branch campus” means any subsidiary place of business main-  
24 tained within the state of Kansas by an institution at a site which is sep-  
25 arate from the site of the principal place of business maintained by the  
26 institution and at which subsidiary place of business the institution offers  
27 a course or courses of instruction or study identical to the course or  
28 courses of instruction or study offered by the institution at its principal  
29 place of business.

30 (d) “Commission” means the advisory commission established pur-  
31 suant to this act.

32 (e) “Distance education” means any course delivered primarily by  
33 correspondence study, audio, video and/or computer technologies.

34 (f) “Foreign institution of postsecondary education” means any insti-  
35 tution of postsecondary education chartered, incorporated or otherwise  
36 organized under the laws of any jurisdiction other than this state.

37 **[(g) “Institution” means any foreign institution of postsecon-  
38 dary education or private postsecondary institution as defined by  
39 this act.]**

40 ~~(g)~~ **[(h)]** “Institution employee” means any person, other than an  
41 owner, who directly or indirectly receives compensation from an insti-  
42 tution for services rendered.

43 ~~(h)~~ **[(i)]** “Owner” of an institution means:

1 (1) In the case of an institution owned by an individual, that  
2 individual;

3 (2) in the case of an institution owned by a partnership, all full, silent  
4 and limited partners;

5 (3) in the case of an institution owned by a corporation, the corpo-  
6 ration, its directors, officers and each shareholder owning shares of issued  
7 and outstanding stock aggregating at least 10% of the total of the issued  
8 and outstanding shares; and

9 (4) in the case of an institution owned by a limited liability company,  
10 the company, its managers and all its members.

11 ~~(j)~~ [(j)] “Person” means any individual, firm, partnership, association  
12 or corporation.

13 ~~(k)~~ [(k)] “Physical presence” exists if the institution employs in Kansas  
14 any Kansas resident for the purpose of administering, coordinating, teach-  
15 ing, training, tutoring, counseling, advising or any other activity on behalf  
16 of the sponsoring organization, or if the institution delivers, or plans to  
17 deliver, instruction in Kansas, and receives assistance from any other or-  
18 ganization within the state in delivering the instruction, such as, but not  
19 limited to, a cable television company or a television broadcast station  
20 that carries instruction sponsored by the institution.

21 ~~(l)~~ [(l)] “Private postsecondary institutions” ~~or “institutions”~~ are de-  
22 fined as entities which:

23 (1) Are business enterprises whether operated on a profit or not-for-  
24 profit basis; which have a physical presence within the state of Kansas, or  
25 solicit business within the state of Kansas;

26 (2) offer a course or courses of instruction or study through classroom  
27 contact or by distance education, or both, for the purpose of training or  
28 preparing persons for a field of endeavor in a business, trade, technical  
29 or industrial occupation, or offer a course or courses leading to an aca-  
30 demic degree, except as hereinafter excluded; and

31 (3) are not specifically exempted by the provisions of this act.

32 ~~(m)~~ [(m)] “Representative” means any person employed by an insti-  
33 tution to act as an agent, solicitor or broker to procure students or en-  
34 rollees for the institution by solicitation within this state at any place other  
35 than the office or a place of business of the institution.

36 ~~(n)~~ [(n)] “State board” means the Kansas board of regents, or such  
37 person or persons as may be designated by the state board to administer  
38 the provisions of this act.

39 ~~(o)~~ [(o)] “Support” or “supported” means the primary source and  
40 means by which an institution derives revenue to perpetuate operation  
41 of the institution.

42 ~~(p)~~ [(p)] “University” refers exclusively to an institution of postsec-  
43 dary education authorized to offer bachelor degrees together with grad-

1 uate or first professional degrees.

2 Sec. 3. The following are exempt from the provisions of this act and  
3 shall not be considered to be within the definition of private ~~and~~ [or]  
4 foreign postsecondary institutions:

5 (a) An institution or educational institution supported primarily by  
6 Kansas taxation from either a local or state source;

7 (b) an institution or training program which offers instruction only  
8 for avocational or recreational purposes as determined by the state board;

9 (c) a course or courses of instruction or study, excluding degree-  
10 granting programs, sponsored by an employer for the training and prep-  
11 aration of its own employees, and for which no tuition or other fee is  
12 charged to the student;

13 (d) a course or courses of instruction or study sponsored by a rec-  
14 ognized trade, business or professional organization having a closed mem-  
15 bership for the instruction of the members of the organization, and for  
16 which no tuition or other fee is charged to the student;

17 (e) an institution which is otherwise regulated and approved under  
18 any other law of this state;

19 (f) a course or courses of special study or instruction having a closed  
20 enrollment and financed or subsidized on a contract basis by local or state  
21 government, private industry, or any person, firm, association or agency,  
22 other than the student involved;

23 (g) an institution financed or subsidized by federal or special funds  
24 which has applied to the state board for exemption from the provisions  
25 of this act and which has been declared exempt by the state board because  
26 it has found that the operation of such institution is outside the purview  
27 of this act; and

28 (h) Any institution of postsecondary education which was granted ap-  
29 proval to confer academic or honorary degrees by the state board of ed-  
30 ucation under the provisions of former K.S.A. 17-6105 or to the Kansas  
31 City college and bible school, inc.

32 Sec. 4. (a) The state board of regents may adopt rules and regulations  
33 for the administration of this act. Prior to the adoption of any such rules  
34 and regulations, the state board shall afford the advisory commission an  
35 opportunity to make recommendations thereon.

36 (b) Specific standards shall be set for determining those private or  
37 foreign institutions of postsecondary education which qualify for approval  
38 to confer or award degrees. Such standards shall be consistent with stan-  
39 dards applicable to state educational institutions under the control and  
40 supervision of the state board of regents.

41 (c) The state board shall maintain a list of institutions that have been  
42 issued a certificate of approval.

43 (d) Any state agency having information which will enable the state

1 board of regents to exercise its powers and perform its duties in admin-  
2 istering the provisions of this act shall from time to time as requested  
3 furnish such information to the state board of regents.

4 Sec. 5. (a) The advisory commission on private and foreign postse-  
5 condary institutions is hereby created. The commission shall consist of  
6 nine members appointed by the state board. Members shall serve from  
7 the date of appointment for terms of four years. If a commission member  
8 resigns, or is otherwise unable to serve, a new member shall be appointed  
9 by the state board to fill the unexpired term. Five members of the com-  
10 mission shall be owners or managers of private postsecondary institutions,  
11 at least two of the five members shall represent institutions, which at the  
12 time of appointment of such members, have enrollments of under 125  
13 students, and at least one shall represent a degree granting institution.  
14 Four members shall be selected from among the following categories:  
15 Secondary schools, postsecondary schools, business and industry, the em-  
16 ployment community, economic development and health occupations.

17 (b) The commission shall elect one member as chairperson of the  
18 commission and such other officers as may be necessary.

19 (c) The commission shall meet at least annually in Topeka during the  
20 month of October, and shall conduct special meetings on the call of the  
21 chairperson or the state board or at the request of at least four members  
22 of the commission.

23 (d) Members of the advisory commission on private and foreign pos-  
24 tsecondary institutions attending meetings of such commission, or at-  
25 tending a subcommittee meeting thereof authorized by such commission,  
26 shall be paid amounts provided in subsection (e) of K.S.A. 75-3223, and  
27 amendments thereto.

28 (e) A majority of the commission is a quorum to conduct business,  
29 but no less than four members must concur to pass upon any matter  
30 before the commission.

31 (f) The commission may recommend to the state board such policies,  
32 regulations, minimum standards and general rules that the commission  
33 deems necessary for administering the provisions of this act.

34 Sec. 6. (a) No private or foreign postsecondary institution may op-  
35 erate within this state without obtaining a certificate of approval from the  
36 state board as provided in this act. No private institution of postsecondary  
37 education chartered, incorporated or otherwise organized under the laws  
38 of this state shall confer or award any degree, whether academic or hon-  
39 orary, unless and until such an institution has been approved for such  
40 purpose by the state board of regents.

41 (b) Any contract entered into by or on behalf of any owner, institution  
42 employee or representative of an institution which is subject to the pro-  
43 visions of this act, but which has not obtained a certificate of approval,

1 shall be unenforceable in any action.

2 Sec. 7. (a) Each institution shall apply to the state board for a certifi-  
3 cate of approval. An institution shall not be required to obtain a separate  
4 certificate of approval for maintenance of any branch institution.

5 (b) An application for a certificate of approval shall be made on a  
6 form prepared and furnished by the state board and shall contain such  
7 information as may be required by the state board.

8 (c) The state board may issue a certificate of approval upon deter-  
9 mination that an institution meets the standards established by the state  
10 board. The state board may issue a certificate of approval to any institution  
11 accredited by a regional or national accrediting agency recognized by the  
12 United States ~~office~~ **[department]** of education without further  
13 evidence.

14 Sec. 8. The state board shall issue a certificate of approval to an in-  
15 stitution when the state board is satisfied that the institution meets min-  
16 imum standards established by the state board by adoption of rules and  
17 regulations to insure that:

18 (a) Courses, curriculum and instruction are of such quality, content  
19 and length as may reasonably and adequately ensure achievement of the  
20 stated objective for which the courses, curriculum or instruction are  
21 offered.

22 (b) Institutions have adequate space, equipment, instructional ma-  
23 terial and personnel to provide education and training of good quality.

24 (c) Educational and experience qualifications of directors, adminis-  
25 trators and instructors are such as may reasonably insure that students  
26 will receive instruction consistent with the objectives of their program of  
27 study.

28 (d) Institutions maintain written records of the previous education  
29 and training of students and applicant students, and that training periods  
30 are shortened when warranted by such previous education and training  
31 or by skill or achievement tests.

32 (e) A copy of the course outline, schedule of tuition, fees and other  
33 charges, settlement policy, rules pertaining to absence, grading policy and  
34 rules of operation and conduct are furnished to students upon entry into  
35 class.

36 (f) Upon completion of training and/or instruction, students are given  
37 certificates, diplomas or degrees as appropriate by the institution indi-  
38 cating satisfactory completion of the program.

39 (g) Adequate records are kept to show attendance, satisfactory aca-  
40 demic progress and enforcement of satisfactory standards relating to at-  
41 tendance, progress and conduct.

42 (h) Institutions comply with all local, city, county, municipal, state  
43 and federal regulations.

1 (i) Institutions are financially responsible and capable of fulfilling  
2 commitments for instruction.

3 (j) Institutions do not utilize erroneous or misleading advertising, ei-  
4 ther by actual statement, omission or intimation.

5 (k) Institutions have and maintain a policy, which shall be subject to  
6 state board approval, for the refund of unused portions of tuition, fees  
7 and other charges in the event a student enrolled by the institution fails  
8 to begin a course or withdraws or is discontinued therefrom at any time  
9 prior to completion, which policies shall take into account those costs of  
10 the institution that are not diminished by the failure of the student to  
11 enter or complete a course of instruction.

12 Sec. 9. (a) The state board, upon review of an application for a cer-  
13 tificate of approval meeting the requirements of this act shall issue a  
14 certificate of approval to the applicant institution. Certificates of approval  
15 shall be in a form specified by the state board with advice from the com-  
16 mission. Certificates of approval shall state at least the following  
17 information:

18 (1) The date of issuance and term of approval;

19 (2) the correct name and address of the institution; and

20 (3) the signature of the chief executive officer of the Kansas board of  
21 regents or a person designated by the state board to administer the pro-  
22 visions of this act.

23 (b) Certificates of approval shall be valid for a term of one year.

24 (c) Each certificate of approval shall be issued to the owner of an  
25 applicant private ~~and~~ [or] foreign postsecondary institution and shall be  
26 nontransferable. In the event of a change in ownership of a private ~~and~~  
27 [or] foreign postsecondary institution, the new owner must apply within  
28 30 calendar days prior to the change in ownership for a new certificate  
29 of approval. The state board may waive the 30 calendar day requirement  
30 upon determination that an emergency exists and that the waiver and  
31 change in ownership would be in the best interests of students currently  
32 enrolled in the private ~~and~~ [or] foreign postsecondary institution. When-  
33 ever a change of ownership occurs as a result of death, court order or  
34 operation of law, the new owner shall apply immediately for a new cer-  
35 tificate of approval.

36 (d) At least 60 calendar days prior to expiration of a certificate of  
37 approval, the state board shall forward to the private ~~and~~ [or] foreign  
38 postsecondary institution a renewal application form.

39 (e) Any institution which is not yet in operation when its application  
40 for a certificate of approval is filed shall not accept payments for tuition,  
41 fees or other enrollment charges until receipt of the certificate of  
42 approval.

43 (f) Any institution which does not plan to renew a certificate of ap-

1 proval must notify the state board at least 60 calendar days prior to the  
2 expiration date of the certificate of approval.

3 Sec. 10. (a) If the state board, upon review and consideration of an  
4 application for a certificate of approval, determines the applicant to be  
5 unacceptable, the state board shall refuse to issue the certificate and set  
6 forth the reasons for the determination.

7 (b) If an applicant, upon written notification of refusal by the state  
8 board to issue a certificate of approval, desires to contest such refusal,  
9 the applicant shall notify the state board in writing, within 15 calendar  
10 days after the date of service of such notice of refusal, of the desire to be  
11 heard, and such applicant shall be afforded a hearing in accordance with  
12 the provisions of the Kansas administrative procedure act. Upon conclu-  
13 sion of any such hearing, the state board shall issue a certificate of ap-  
14 proval or a final refusal to do so.

15 (c) If an applicant, upon service of notice of refusal by the state board  
16 to issue a certificate of approval, fails to request a hearing within 15 cal-  
17 endar days after the date of service of such notice of refusal, the state  
18 board's refusal shall be final.

19 Sec. 11. (a) The state board may revoke a certificate of approval or  
20 impose reasonable conditions upon the continued approval represented  
21 by a certificate. Prior to revocation or imposition of conditions upon a  
22 certificate of approval, the state board shall notify the holder of the cer-  
23 tificate in writing of the impending action setting forth the grounds for  
24 the action contemplated to be taken and affording a hearing on a date  
25 within 30 calendar days after the date of such notice. Hearings under this  
26 section shall be conducted in accordance with the provisions of the Kansas  
27 administrative procedure act.

28 (b) A certificate of approval may be revoked or conditioned if the  
29 state board has reasonable cause to believe that the institution is in vio-  
30 lation of any provision of this act or of any rules and regulations adopted  
31 under this act.

32 Sec. 12. Any action of the state board pursuant to sections 10, 11 or  
33 13, and amendments thereto, is subject to review in accordance with the  
34 act for judicial review and civil enforcement of agency actions. If it shall  
35 appear to the board of regents on the basis of its own inquiries or inves-  
36 tigation or as a result of a complaint that any of the provisions of this act  
37 have been or are about to be violated, the board of regents may request  
38 the attorney general to institute an action enjoining such violation or for  
39 an order directing compliance with the provisions of this act.

40 Sec. 13. (a) Each representative of an institution shall register with  
41 the state board. Application for registration may be made at any time on  
42 a form prepared and furnished by the state board and shall contain such  
43 information as may be required by the state board.

1 (b) Registration of a representative shall be effective upon receipt of  
2 notice from the state board and shall remain in effect until expiration of  
3 the certificate of approval of the institution employing such representa-  
4 tive. Renewal of representative registration shall be in accordance with  
5 the renewal application form forwarded to the institution by the state  
6 board.

7 (c) Denial or revocation of registration of a representative by the state  
8 board shall be in accordance with the provisions of this act applicable to  
9 denial or revocation of a certificate of approval.

10 (d) A representative employed by more than one institution shall not  
11 be required to register for each institution when such institutions have a  
12 common ownership.

13 Sec. 14. (a) Before a certificate of approval is issued under this act,  
14 a bond in the penal sum of \$20,000 shall be provided by the institution  
15 for the period for which the certificate of approval is to be issued. The  
16 obligation of the bond shall be that the institution and its officers, agents,  
17 representatives and other employees shall be bound, upon closure of the  
18 institution, to deliver or make available to the state board the records of  
19 all students who are in attendance at the institution at the time of closure  
20 or who have attended the institution at any time prior to closure. The  
21 bond shall be a corporate surety bond issued by a company authorized to  
22 do business in this state. The bond shall be filed with the state board. If  
23 the institution ceases operation, the state board may recover against the  
24 bond all necessary costs for the acquisition, permanent filing and main-  
25 tenance of student records of the ~~private postsecondary~~ institution.

26 (b) In lieu of the corporate surety bond required under subsection  
27 (a), an institution may provide any similar certificate or evidence of in-  
28 debtedness or insurance as may be acceptable to the state board if such  
29 certificate or evidence of indebtedness or insurance is conditioned that  
30 the requirements of subsection (a) shall be met.

31 Sec. 15. (a) Subject to the provisions of subsection (b), no tuition in  
32 an amount greater than \$350 shall be collected from a student by any  
33 institution more than 30 days before the student receives classroom in-  
34 struction, and not more than \$150 of such amount may be retained by an  
35 institution from any student who fails to enter the institution.

36 (b) In the case of distance education, no tuition in an amount greater  
37 than \$200 shall be collected from a student prior to the first submission  
38 of a lesson by the student, and not more than \$75 of such amount may  
39 be retained by an institution from any student who fails to enter the  
40 institution.

41 Sec. 16. (a) No person shall:

42 (1) Operate an institution without a certificate of approval;

43 (2) solicit prospective students without being registered as required



1 by this act;

2 (3) accept contracts or enrollment applications from a representative  
3 who is not registered as required by this act;

4 (4) use fraud or misrepresentation in advertising or in procuring en-  
5 rollment of a student;

6 (5) use the term “accreditation” except as defined in this act; and

7 (6) use the term “university” in the name or advertisement of the  
8 institution unless such institution is a “university” as defined by this act.

9 (b) Violation of any provision of subsection (a) or of any other provision  
10 of this act is a class C nonperson misdemeanor.

11 Sec. 17. Upon application of the attorney general or a county or dis-  
12 trict attorney, the district courts shall have jurisdiction to enjoin any vi-  
13 olation of this act and to enjoin persons from engaging in business in this  
14 state. In any action brought to enforce the provisions of this act, if the  
15 court finds that a person willfully used any deceptive or misleading act or  
16 practice, the attorney general or a county or district attorney, upon pe-  
17 tition to the court, may recover on behalf of the state, in addition to the  
18 criminal penalties provided in this act, a civil penalty not exceeding \$1,000  
19 per person for each violation. For purposes of this section, a willful vi-  
20 olation occurs when the person committing the violation knew or should  
21 have known that the conduct of the person consisted of acts or practices  
22 which were deceptive or misleading.

23 Sec. 18. Any note or contract taken by any institution or its officers,  
24 directors, agents or representatives, without having complied with the  
25 provisions of this act, shall be null and void and any person who shall  
26 have entered into a contract with such institution or its officers, directors,  
27 agents or representatives shall be entitled to a full refund of the money  
28 or consideration paid plus interest accruing from the date of payment at  
29 a rate per annum equal to the rate specified in K.S.A. 16-207, and amend-  
30 ments thereto, together with other damages sustained by such person.

31 Sec. 19. Whenever any institution negotiates any promissory instru-  
32 ment or note received from a student or on behalf of a student as payment  
33 of tuition or other fees charged by each institution, any person or assignee  
34 or holder to whom the instrument or note is assigned shall take such  
35 instrument or note subject to all defenses which would be available to  
36 the student from whom or on behalf of whom the instrument or note was  
37 received.

38 Sec. 20. (a) The state board shall fix, charge and collect fees for cer-  
39 tificates of approval, registration of representatives and providing tran-  
40 scripts to students who attended a private postsecondary [an] institution  
41 that has ceased operation by adopting rules and regulations for such pur-  
42 poses, subject to the following limitations:

43 (1) For institutions domiciled or having their principal place of busi-

1	ness within the state of Kansas:	
2	Initial issuance of certificate of approval nondegree granting — not more	
3	than .....	\$1,700
4	Initial issuance of certificate of approval degree granting — not more	
5	than .....	\$2,000
6	Renewal of certificate of approval nondegree granting — not more	
7	than .....	\$1,200
8	Renewal of certificate of approval degree granting — not more than ....	\$1,600
9	Initial registration of representative — not more than .....	\$150
10	Annual renewal of registration of representative — not more than .....	\$100
11	(2) For institutions domiciled or having their principal place of busi-	
12	ness outside the state of Kansas:	
13	Initial issuance of certificate of approval nondegree granting — not more	
14	than .....	\$3,400
15	Initial issuance of certificate of approval degree granting — not more	
16	than .....	\$3,800
17	Renewal of certificate of approval nondegree granting — not more	
18	than .....	\$2,400
19	Renewal of certificate of approval degree granting — not more than ....	\$2,800
20	Initial registration of representative — not more than .....	\$300
21	Annual renewal of registration of representative — not more than .....	\$200
22	Student transcript from institution that has ceased operation — not more	
23	than .....	\$10

24     (b) The state board shall determine on or before June 1 of each year  
 25 the amount of revenue which will be required to properly carry out and  
 26 enforce the provisions of the Kansas private and foreign postsecondary  
 27 institution act for the next ensuing fiscal year and shall fix the fees au-  
 28 thorized for such year at the sum deemed necessary for such purposes  
 29 within the limits of this section. Prior to adoption of any such fees, the  
 30 state board shall afford the advisory commission on private and foreign  
 31 postsecondary institutions an opportunity to make recommendations on  
 32 the proposed fees.

33     (c) Fees may be charged to conduct onsite reviews for degree grant-  
 34 ing or to review curriculum in content areas where the state board does  
 35 not have expertise.

36     Sec. 21. (a) The state board shall remit all moneys received pursuant  
 37 to the provisions of this act to the state treasurer. Upon receipt of each  
 38 such remittance, the state treasurer shall deposit the entire amount re-  
 39 mitted in the state treasury and shall credit the same to the private and  
 40 foreign postsecondary institution fee fund to be used for the purpose of  
 41 administering this act. All expenditures from the private and foreign pos-  
 42 tsecondary institution fee fund shall be made in accordance with appro-  
 43 priations acts upon warrants of the director of accounts and reports issued

1 pursuant to vouchers approved by the state board or by a person or per-  
2 sons designated by the state board.

3 (b) On or before the 10th of each month, the director of accounts  
4 and reports shall transfer from the state general fund to the private and  
5 foreign postsecondary institution fee fund interest earnings based on: (1)  
6 The average daily balance of moneys in the private and foreign postse-  
7 condary institution fee fund for the preceding month; and (2) the net  
8 earnings rate for the pooled money investment portfolio for the preceding  
9 month.

10 Sec. 22. If any clause, paragraph, subsection or section of the Kansas  
11 private and foreign postsecondary institution act shall be unconstitutional  
12 or invalid, it shall be conclusively presumed that the legislature would  
13 have enacted the remainder of the act without such unconstitutional or  
14 invalid clause, paragraph, subsection or section.

15 Sec. 23. K.S.A. 72-4916, 72-4919, 72-4920, 72-4921, 72-4922, 72-  
16 4924 through 72-4937, inclusive, 72-4939, 72-4940 and 74-3249 through  
17 74-3253, inclusive, and K.S.A. 2003 Supp. 72-4938 are hereby repealed.

18 Sec. 24. This act shall take effect and be in force from and after its  
19 publication in the statute book.