

SENATE BILL No. 131

AN ACT concerning postsecondary educational institutions; relating to the regulation thereof; relating to certain faculty thereof; amending K.S.A. 2009 Supp. 46-247, 74-32,162, 74-32,163, 74-32,167, 74-32,168, 74-32,169, 74-32,170, 74-32,178 and 74-32,181 and repealing the existing sections; also repealing K.S.A. 2009 Supp. 46-247a.

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

Section 1. K.S.A. 2009 Supp. 74-32,162 is hereby amended to read as follows: 74-32,162. K.S.A. 2009 Supp. 74-32,163 through 74-32,183 and section 9, and amendments thereto, shall be known and may be cited as the Kansas private and out-of-state postsecondary educational institution act.

Sec. 2. K.S.A. 2009 Supp. 74-32,163 is hereby amended to read as follows: 74-32,163. As used in the Kansas private and out-of-state postsecondary educational institution act:

(a) "Academic degree" means any associate, bachelor's, ~~first~~ professional, master's, ~~intermediate (specialist) or doctor's specialist or doctoral~~ degree.

(b) "Accreditation" means an accreditation by an agency recognized by the United States department of education.

(c) "Branch campus" means any subsidiary place of business maintained within the state of Kansas by an institution at a site which is separate from the site of the institution's principal place of business and at which the institution offers a course or courses of instruction or study identical to the course or courses of instruction or study offered by the institution at its principal place of business.

(d) "Commission" means the advisory commission on private and out-of-state postsecondary educational institutions established pursuant to ~~this act~~ K.S.A. 2009 Supp. 74-32,166, and amendments thereto.

(e) "Distance education" means any course delivered primarily by use of correspondence study, audio, video or computer technologies.

(f) "Out-of-state postsecondary educational institution" means a postsecondary educational institution chartered, incorporated or otherwise organized under the laws of any jurisdiction other than the state of Kansas.

(g) "Institution" means an out-of-state or private postsecondary educational institution.

(h) "Institution employee" means any person, other than an owner, who directly or indirectly receives compensation from an institution for services rendered.

(i) "Owner of an institution" means:

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

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

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

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

(j) "Person" means an individual, firm, partnership, association or corporation.

(k) "Physical presence" means:

(1) The employment in Kansas of a Kansas resident for the purpose of administering, coordinating, teaching, training, tutoring, counseling, advising or any other activity on behalf of the institution, ~~or;~~ or

(2) The delivery of, or the intent to deliver, instruction in Kansas with the assistance from any entity within the state in delivering the instruction including, but not limited to, a cable television company or a television broadcast station that carries instruction sponsored by the institution.

(l) "Private postsecondary educational institution" means an entity which:

(1) Is a business enterprise, whether operated on a profit or not-for-profit basis, which has a physical presence within the state of Kansas or which solicits business within the state of Kansas;

(2) offers a course or courses of instruction or study through classroom contact or by distance education, or both, for the purpose of training or preparing persons for a field of endeavor in a business, trade, technical or industrial occupation or which offers a course or courses leading to an academic degree; and

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

(m) “Representative” means any person employed by an institution to act as an agent, solicitor or broker to procure students or enrollees for the institution ~~by solicitation within this state at any place other than the office or a place of business of the institution.~~

(n) “State board” means the ~~Kansas~~ *state* board of regents or the board’s designee.

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

(p) “University” means a postsecondary educational institution authorized to offer ~~bachelor degrees together with graduate or first professional degrees~~ *any degree including a bachelor, graduate or professional degree.*

(q) “State educational institution” means any state educational institution as defined by K.S.A. 76-711, and amendments thereto.

~~(r) “This act” means the Kansas private and out-of-state postsecondary educational institution act.~~

Sec. 3. K.S.A. 2009 Supp. 74-32,167 is hereby amended to read as follows: 74-32,167. (a) No institution may operate within this state without obtaining a certificate of approval from the state board as provided in this act. No institution shall confer or award any degree, *certificate or diploma*, whether academic or honorary, unless such institution has been approved for such purpose by the state board ~~of regents.~~

(b) Any contract entered into by or on behalf of any owner, employee or representative of an institution which is subject to the provisions of this act, but which has not obtained a certificate of approval, shall be unenforceable in any action.

Sec. 4. K.S.A. 2009 Supp. 74-32,168 is hereby amended to read as follows: 74-32,168. (a) Each institution shall apply to the state board for a certificate of approval. ~~An institution shall not be required to obtain a separate certificate of approval for maintenance of any branch institution. An institution which opens or maintains a branch campus shall notify the state board that it has opened or is maintaining a branch campus. Such branch campus shall be subject to review by the state board to determine whether it complies with the provisions of this act and the standards of the state board established pursuant thereto.~~

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

(c) The state board may issue a certificate of approval upon determination that an institution meets the standards established by the state board. The state board may issue a certificate of approval to any institution accredited by a regional or national accrediting agency recognized by the United States department of education without further evidence.

Sec. 5. K.S.A. 2009 Supp. 74-32,169 is hereby amended to read as follows: 74-32,169. The state board shall issue a certificate of approval to an institution when the state board is satisfied that the institution meets minimum standards established by the state board by adoption of rules and regulations to insure that:

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

(b) institutions have adequate space, equipment, instructional material and personnel to provide education and training of good quality;

(c) educational and experience qualifications of directors, administrators and instructors are such as may reasonably insure that students will receive instruction consistent with the objectives of their program of study;

(d) institutions maintain written records of the previous education and training of students and applicant students, and that training periods are shortened when warranted by such previous education and training or by skill or achievement tests;

(e) a copy of the course outline, schedule of tuition, fees and other charges, settlement policy, rules pertaining to absence, grading policy and

rules of operation and conduct are furnished to students upon entry into class;

(f) upon completion of training or instruction, students are given certificates, diplomas or degrees as appropriate by the institution indicating satisfactory completion of the program;

(g) adequate records are kept to show attendance, satisfactory academic progress and enforcement of satisfactory standards relating to attendance, progress and conduct;

(h) institutions comply with all local, state and federal regulations;

(i) institutions are financially responsible and capable of fulfilling commitments for instruction;

(j) institutions do not utilize erroneous or misleading advertising, either by actual statement, omission or intimation; ~~and~~

(k) institutions have and maintain a policy, which shall be subject to state board approval, for the refund of unused portions of tuition, fees and other charges if a student enrolled by the institution fails to begin a course or withdraws or is discontinued therefrom at any time prior to completion. Such policies shall take into account those costs of the institution that are not diminished by the failure of the student to enter or complete a course of instruction; *and*

(l) *institutions adopt, publish and adhere to a procedure for handling student complaints. Institutions shall post information so that students will be aware of the complaint process available to them. The information shall be posted in locations that are used or seen by all students on a regular basis such as the institution's web site, enrollment agreement, catalogue or other media.*

Sec. 6. K.S.A. 2009 Supp. 74-32,170 is hereby amended to read as follows: 74-32,170. (a) After review of an application for a certificate of approval and if the state board determines that the institution meets the requirements of this act *and the standards established by the state board*, the state board shall issue a certificate of approval to the institution. Certificates of approval shall be in a form specified by the state board. Certificates of approval shall state:

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

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

(3) the signature of the chief executive officer of the ~~Kansas board of regents~~ *state board* or a person designated by the state board to administer the provisions of this act; and

(4) any other information required by the state board.

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

(c) Each certificate of approval shall be issued to the owner of an institution and shall not be transferable. If a change in ownership of an institution occurs, the new owner shall apply within ~~30~~ 60 days prior to the change in ownership for a new certificate of approval. The state board may waive the ~~thirty-day~~ *sixty-day* requirement upon determination that an emergency exists and that the waiver and change in ownership would be in the best interests of students currently enrolled in the institution. Whenever a change in ownership occurs as a result of death, court order or operation of law, the new owner shall apply immediately for a new certificate of approval.

(d) At least ~~60~~ 120 days prior to expiration of a certificate of approval, the state board shall forward to the institution a renewal application form. *Any institution desiring to renew its certificate of approval, shall complete and submit the application for renewal to the state board at least 60 days prior to the expiration of the institution's certificate of approval.*

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

(e) Unless exempt from the provisions of this act pursuant to K.S.A. 2009 Supp. 74-32,164, and amendments thereto, an institution shall not accept payments for tuition, fees or other enrollment charges until the institution receives a certificate of approval from the state board.

(f) Any institution which does not plan to renew a certificate of approval shall notify the state board of its intent not to renew at least 60 days prior to the expiration date of the certificate of approval.

Sec. 7. K.S.A. 2009 Supp. 74-32,178 is hereby amended to read as follows: 74-32,178. Upon application of the attorney general or a county or district attorney, a district court shall have jurisdiction to enjoin any violation of this act and to enjoin persons from engaging in business in this state. In any action brought to enforce the provisions of this act, if the court finds that a person willfully used any deceptive or misleading act or practice *or operates an institution without first obtaining and maintaining a certificate of approval*, the attorney general or a county or district attorney, upon petition to the court, may recover on behalf of the state, in addition to the criminal penalties provided in this act, a civil penalty not exceeding ~~\$1,000~~ \$5,000 for each violation. For purposes of this section, ~~a willful~~ *an intentional* violation occurs when the person committing the violation knew or should have known that the conduct of the person consisted of acts or practices which were deceptive or misleading *including the operation of an institution without first obtaining a certificate of approval from the state board. Any violation of this act or any rule or regulation adopted pursuant thereto is a deceptive act or practice under the Kansas consumer protection act. Any remedy provided by this act shall be in addition to any other remedy provided by the Kansas consumer protection act.*

Sec. 8. K.S.A. 2009 Supp. 74-32,181 is hereby amended to read as follows: 74-32,181. (a) *This section is subject to the provisions of section 9, and amendments thereto.*

(b) The state board shall fix, charge and collect fees for certificates of approval, registration of representatives and providing transcripts to students who attended an institution that has ceased operation by adopting rules and regulations for such purposes, subject to the following limitations:

(1) For institutions domiciled or having their principal place of business within the state of Kansas:

Initial issuance of certificate of approval nondegree granting — not more than	\$1,700
Initial issuance of certificate of approval degree granting — not more than	\$2,000
Renewal of certificate of approval nondegree granting — not more than	\$1,200
Renewal of certificate of approval degree granting — not more than	\$1,600
Initial registration of representative — not more than	\$150
Annual renewal of registration of representative — not more than	\$100

(2) For institutions domiciled or having their principal place of business outside the state of Kansas:

Initial issuance of certificate of approval nondegree granting — not more than	\$3,400
Initial issuance of certificate of approval degree granting — not more than	\$3,800
Renewal of certificate of approval nondegree granting — not more than	\$2,400
Renewal of certificate of approval degree granting — not more than	\$2,800
Initial registration of representative — not more than	\$300
Annual renewal of registration of representative — not more than	\$200
Student transcript from institution that has ceased operation — not more than	\$10

(c) *Fees shall not be refundable.*

(d) *If there is a change in the ownership of an institution and, if at the same time, there also are changes in the institution's programs of instruction, location, entrance requirements or other changes, the institution shall be required to submit an application for an initial certificate of approval and shall pay all applicable fees associated with an initial application.*

(e) *An application for renewal shall be deemed late if the applicant fails to submit a completed application for renewal, or documentation requested by the state board to complete the renewal process, before the expiration date of the current certificate of approval.*

~~(b)~~ (f) The state board shall determine on or before June 1 of each year the amount of revenue which will be required to properly carry out and enforce the provisions of the Kansas private and out-of-state postsecondary educational institution act for the next ensuing fiscal year and shall fix the fees authorized for such year at the sum deemed necessary for such purposes within the limits of this section. Prior to adoption of

any such fees, the state board shall afford the advisory commission an opportunity to make recommendations on the proposed fees.

~~(e)~~ (g) Fees may be charged to conduct onsite reviews for degree granting *and non-degree granting institutions* or to review curriculum in content areas where the state board does not have expertise.

New Sec. 9. (a) During fiscal year 2011, the state board shall collect the fees fixed by this section.

(1) For institutions domiciled or having their principal place of business within the state of Kansas:

Initial application fees:	
Non-degree granting institution	\$2,000
Degree granting institution	\$3,000
Initial evaluation fees (in addition to initial application fees):	
Non-degree level	\$750
Associate degree level	\$1,000
Baccalaureate degree level	\$2,000
Master's degree level	\$3,000
Professional and/or doctoral degree level	\$4,000
Renewal application fees:	
Non-degree granting institution	0.2 percent of gross tuition, but not less than \$1,200 nor more than \$25,000
Degree-granting institution	0.2 percent of gross tuition, but not less than \$1,600 nor more than \$25,000
New program submission fees, for each new program:	
Non-degree program	\$250
Associate degree program	\$500
Baccalaureate degree program	\$750
Master's degree program	\$1,000
Professional and/or doctoral degree program	\$2,000
Program modification fee, for each program	\$100
Branch campus site fees, for each branch campus site:	
Initial non-degree granting institution	\$1,500
Initial degree granting institution	\$2,500
Renewal branch campus site fees, for each branch campus site:	
Non-degree granting institution	0.2 percent of gross tuition, but not less than \$1,200 nor more than \$25,000
Degree-granting institution	0.2 percent of gross tuition, but not less than \$1,600 nor more than \$25,000
On-site branch campus review fee, for each site	\$250
Representative fees:	
Initial registration	\$200
Renewal of registration	\$150
Late submission of renewal of application fee	\$125
Student transcript copy fee	\$10
Returned check fee	\$50
Changes in institution profile fees:	
Change of institution name	\$100
Change of institution location	\$100
Change of ownership only	\$100

(2) For institutions domiciled or having their principal place of business outside the state of Kansas:

Initial application fees:	
Non-degree granting institution	\$4,000
Degree granting institution	\$5,500
Initial evaluation fees (in addition to initial application fees):	
Non-degree level	\$1,500
Associate degree level	\$2,000
Baccalaureate degree level	\$3,000
Master's degree level	\$4,000
Professional and/or doctoral degree level	\$5,000
Renewal application fees:	
Non-degree granting institution	0.3 percent, but not less than \$2,400 nor more than \$25,000
Degree-granting institution	0.3 percent, but not less than \$3,000 nor more than \$25,000
New program submission fees, for each new program:	
Non-degree granting program	\$500
Associate degree program	\$750
Baccalaureate degree program	\$1,000
Master's degree program	\$1,500
Professional and/or doctoral degree program	\$2,500
Program modification fee, for each program	\$100
Branch campus site fees, for each branch campus site:	
Initial non-degree granting institution	\$4,000

Initial degree granting institution	\$5,500
Renewal branch campus site fees, for each branch campus site:	
Non-degree granting institution	0.3 percent, but not less than \$2,400 nor more than \$25,000
Degree-granting institution	0.3 percent, but not less than \$3,000 nor more than \$25,000
On-site branch campus review fee, for each site	\$500
Representative fees:	
Initial registration	\$350
Renewal of registration	\$250
Late submission of renewal of application fee	\$125
Student transcript copy fee	\$10
Returned check fee	\$50
Changes in institution profile fees:	
Change of institution name	\$100
Change of institution location	\$100
Change of ownership only	\$100

(b) Fees shall not be refundable.

(c) If there is a change in the ownership of an institution and, if at the same time, there also are changes in the institution's programs of instruction, location, entrance requirements or other changes, the institution shall be required to submit an application for an initial certificate of approval and shall pay all applicable fees associated with an initial application.

(d) An application for renewal shall be deemed late if the applicant fails to submit a completed application for renewal, or documentation requested by the state board to complete the renewal process, before the expiration date of the current certificate of approval.

(e) Fees may be charged to conduct onsite reviews for degree granting and non-degree granting institutions or to review curriculum in content areas where the state board does not have expertise.

New Sec. 10. Within the limits of appropriations therefore, the state board shall develop and maintain a statewide data collection system to collect and analyze private and out-of-state postsecondary educational information, including, but not limited to, student, course, financial aid and program demographics that will assist the board in improving the quality of private and out-of-state postsecondary education.

Sec. 11. K.S.A. 2009 Supp. 46-247 is hereby amended to read as follows: 46-247. The following individuals shall file written statements of substantial interests, as provided in K.S.A. 46-248 to 46-252, inclusive, and amendments thereto:

(a) Legislators and candidates for nomination or election to the legislature.

(b) Individuals holding an elected office in the executive branch of this state, and candidates for nomination or election to any such office.

(c) State officers, employees and members of boards, councils and commissions under the jurisdiction of the head of any state agency who are listed as designees by the head of a state agency pursuant to K.S.A. 46-285, and amendments thereto.

(d) Individuals whose appointment to office is subject to confirmation by the senate whether or not such individual is a state officer or employee.

(e) General counsels for state agencies irrespective of how compensated.

(f) The administrator or executive director of the education commission of the states, the interstate compact on agricultural grain marketing, the Mo-Kan metropolitan development district and agency compact, the Kansas City area transportation district and authority compact, the midwest nuclear compact, the central interstate low-level radioactive waste compact, the multistate tax compact, the Kansas-Oklahoma Arkansas river basin compact, the Kansas-Nebraska Big Blue river compact, and the multistate lottery.

(g) Private consultants under contract with any agency of the state of Kansas to evaluate bids for public contracts or to award public contracts.

(h) ~~From and after January 1, 2003,~~ Any faculty member or other employee of a postsecondary educational institution as defined by K.S.A. 74-3201b, and amendments thereto, who provides consulting services and who, on behalf of or for the benefit of the person for which consulting services are provided:

(1) Promotes or opposes action or nonaction by any federal agency,

any state agency as defined by K.S.A. 46-224, and amendments thereto, or any political subdivision of the state or any agency of such political subdivision or a representative of such state agency, political subdivision or agency; or

(2) promotes or opposes action or nonaction relating to the expenditure of public funds of the federal government, the state or political subdivision of the state or agency of the federal government, state or political subdivision of the state.

(i) Except as provided by K.S.A. 2009 Supp. 46-247a, and amendments thereto, any faculty member who receives an annual salary of \$150,000 or more, other than an adjunct faculty member, who is employed by a state education institution as defined by K.S.A. 76-711, and amendments thereto.

Sec. 12. K.S.A. 2009 Supp. 46-247, 46-247a, 74-32,162, 74-32,163, 74-32,167, 74-32,168, 74-32,169, 74-32,170, 74-32,178 and 74-32,181 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.