

SESSION OF 2004

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR HOUSE BILL NO. 2493**

As Amended by House Committee of the Whole

Brief*

The bill would enact the "Kansas Private and Foreign Postsecondary Institutions Act" by consolidating existing statutory provisions governing proprietary schools and private postsecondary institutions and extending provisions that currently apply only to proprietary schools to certain private and foreign institutions. As under existing law, the Kansas Board of Regents would be responsible for administering statutory requirements for these institutions. The bill also would enact new enforcement provisions as applied to foreign and private schools and create new categories of fees that would be charged for issuance of certain certificates required under the Act.

Entities to which the bill would apply include:

- ! Any postsecondary schools conducting business in Kansas that are organized under the law of a jurisdiction outside Kansas.
- ! Private postsecondary institutions that are profit making, or non-profit schools with a physical presence in Kansas or which solicit business in Kansas. For purposes of this bill, private institutions include entities that offer courses through classroom contact or via correspondence, audio, video, or computer technology.

Both categories are referred to as "institutions." Entities that would be exempt from the act are those currently exempt from statutory requirements for registration with or certification by the Board of Regents.

An institution would have a "physical presence" in Kansas if it employs in the state a Kansas resident to conduct activities on its

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

behalf. An institution would also have a physical presence in Kansas if it delivers, or plans to deliver, instruction in Kansas and receives assistance delivering that instruction from another organization in the state. Assisting organizations specifically enumerated in the Act include, but would not be limited to, cable television companies and television broadcast stations that carry instruction sponsored by the institution.

The bill would prohibit anyone from:

- ! operating an institution without a certificate of approval from the Board of Regents;
- ! soliciting prospective students without being registered under the Act;
- ! accepting contracts or enrollment applications from a representative who is not registered;
- ! using fraud or misrepresentation in advertising or in procuring enrollment of a student;
- ! using the term "accredited" except as defined by the Act; and
- ! using the term "university" in the name or advertisement of the institution unless the institution meets the definition of that term in the Act.

The bill would enact certain policy changes:

- ! In general, provisions of current law governing proprietary schools would be extended to private and foreign institutions.
- ! With the exception of setting fees, the Board of Regents would be authorized, but not required to adopt rules and regulations to implement the Act. Under existing law, the Board is required to establish implementing rules and regulations.
- ! Standards for determining institutions that qualify for approval to confer or award degrees would no longer be established in rules and regulations. The existing requirement that any such standards be consistent with those applicable to state educational institutions would be included in the new Act.
- ! The composition of the Advisory Commission on Private and Foreign Postsecondary Institutions would differ from the existing advisory commission by inclusion of at least one representative of

a degree granting institution. In addition, categories from among which four of the commission's nine members must be selected would include the employment community and economic development. Agriculture and organized labor would no longer be included among those categories.

- ! The Advisory Commission would no longer be required, but would continue to be authorized, to make recommendations to the Board of Regents regarding administration of the Act.
- ! The bill would specifically prohibit use of the term "accredited" unless an institution is accredited by an agency recognized by the U.S. Department of Education. Use of the term "university" also would be prohibited unless the entity describing itself as such is an institution of postsecondary education authorized by the Board of Regents to offer bachelor degrees and graduate or first professional degrees.

The bill would establish new maximum fees for certification of degree granting institutions. The Board of Regents would be required to set fees in rules and regulations subject to those maximums. The new fees would be:

For Kansas-based institutions:

Initial issuance of certificate of approval	\$2,000
Renewal of certificate of approval	\$1,600

For foreign institutions:

Initial issuance of certificate of approval	\$3,800
Renewal of certificate of approval	\$2,800

The new maximum fee for initial issuance of a certificate of approval for a degree granting institution is \$300 higher than the existing initial certification fee for a non-degree granting institution. The other new maximum fees are \$400 higher than the counterpart fees for nondegree granting institutions. Finally, the bill would authorize the Board to charge an unspecified fee for conduct of onsite reviews for

degree granting institutions or to review curriculum in content areas in which the Board does not have expertise.

A violation of the Act would be a class C nonperson misdemeanor. Under existing law that is the penalty for violation of the proprietary school statutes, but the existing foreign and private school laws do not include a similar penalty. The remedy available to the Board under the existing foreign and private school laws – requesting that the Attorney General seek an injunction or order directing compliance with the Act – also would be expanded to cover proprietary. Thus, either the Attorney General or a County or District Attorney could apply for an injunction to prevent or stop a violation of the Act. If a court finds that a person willfully used a deceptive or misleading act or practice, the Attorney General or a County or District Attorney could petition the court to impose a maximum \$1,000 civil penalty for each violation of the Act.

The provision in the existing proprietary school law regarding notes and contracts would be extended also to foreign and private schools. In accordance with that provision, if an institution is not in compliance with the Act, contracts taken by the institution or its officers, directors, agents or representatives would be null and void. Any person who entered into a contract with such an institution, its officers, institution or its officers, directors, agents or representatives would be entitled to full refund of any money or consideration paid, plus interest, and damages.

Background

The substitute bill was proposed by the Board of Regents as a “broader and more logical approach” to regulation of both proprietary and private degree-granting schools than initially presented in HB 2493 and HB 2494. The latter bills were introduced by the Legislative Educational Planning Committee at the request of the Board of Regents at the end of the 2003 interim. The House Committee of the Whole amendments to the bill were technical in nature.

Private institutions currently operating in Kansas that would be exempt from the bill include: Baker University, Barclay College, Benedictine College, Bethany College, Bethel College, Central Baptist Theological Seminary, Central Christian College, Donnelly College,

Friends University, Hesston College, Kansas Wesleyan University, Manhattan Christian College, McPherson College, Mid-American Nazarene University, Newman University, Ottawa University, Southwestern College, Sterling College, Tabor College, and University of Saint Mary.

The Division of the Budget had not prepared a fiscal note on the substitute bill at the time this supplemental note was prepared.

The introduced version of HB 2493 would have exempted from the existing registration requirement for foreign schools those institutions that offer fewer than 30 hours leading to an academic degree. The fiscal note prepared by the Division of the Budget on the introduced version stated that the bill would have no fiscal effect.

The introduced version of HB 2494 would authorize the Board of Regents to set fees for certificates of approval for foreign or private postsecondary institutions. Those fees would be set based on the cost of implementing the statutory requirements. The Budget Division's fiscal note for that bill stated that the fiscal effect could not be estimated accurately.