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300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: Chairman Howe and members of the House Higher Education Budget Committee

From: Jill A. Wolters, First Assistant Revisor

Date: January 31, 2024

Subject: **HB2460**, Prohibiting postsecondary educational institutions from taking certain actions regarding admission applicants and faculty concerning diversity, equity, inclusion or patriotism, exceptions; providing for civil remedies and penalties.

House Bill No. 2460 would prohibit postsecondary educational institutions from conditioning admission or educational aid to an applicant for admission, or hiring, reappointing or promoting a faculty member, on the applicant's or faculty member's pledging allegiance to or making a statement of personal support for or opposition to any political ideology or movement, including a pledge or statement regarding diversity, equity, inclusion, patriotism or related topics, or to request or require any such pledge or statement from an applicant or faculty member.

If a postsecondary educational institution receives a pledge or statement describing a commitment to any particular political ideology or movement, including a pledge or statement regarding diversity, equity, inclusion, patriotism or related topics, such institution may not grant or deny admission or educational aid to a student, or hire, reappoint or promote a faculty member, on the basis of the viewpoints expressed in the pledge or statement.

Nothing in this section shall:

- (1) Prohibit such institution from requiring a student, faculty member or employee to comply with federal or state law, including antidiscrimination laws, or from taking action against a student, faculty member or employee for violations of federal or state law;
- (2) be construed to limit or restrict the academic freedom of faculty or to prevent faculty members from teaching, researching or writing publications about diversity, equity, inclusion, patriotism or other topics; or
- (3) prohibit such institution from considering, in good faith, a faculty member's scholarship, teaching or subject-matter expertise in such faculty member's academic field.

Each institution shall post and make publicly available on such institution's website all training materials used for students, faculty and staff on all matters of nondiscrimination, diversity, equity, inclusion, race, ethnicity, sex or bias and all of such institution's policies and guidance on such matters.

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Any person whose rights were violated through a violation of this section may bring an action against a postsecondary educational institution, and such institution's agent acting within such agent's official capacity, in a state or federal court of competent jurisdiction to receive declaratory relief or enjoin a violation of this section.

If a court finds a violation, the court shall provide a prevailing plaintiff appropriate equitable remedies and award damages, reasonable court costs and attorney fees.

The attorney general may file suit to enjoin a policy or practice prohibited by this section.

If a postsecondary educational institution, or any of such institution's agent acting within such agent's official capacity, are found by a court or the institution to have violated this section, the institution may take disciplinary action against the responsible agents in accordance with the institution's policies and procedures.

In addition to any relief under this section, the state treasurer shall impose an administrative penalty of \$100,000 against a postsecondary educational institution for each violation of this section. Any action taken under this section that imposes any administrative penalty shall be taken only after notice and an opportunity for a hearing conducted in accordance with the provisions of the Kansas administrative procedure act. The state treasurer shall certify to the director of accounts and reports any penalty assessed pursuant to this subsection. Upon receipt of each such certification, the director of accounts and reports shall transfer from the state general fund account or special revenue fund of the violating postsecondary educational institution to the state general fund account or special revenue fund of a postsecondary educational institution that is not currently in violation of this section and has not violated this section during the preceding two fiscal years as determined by the state treasurer, in consultation with the director of the budget.

As used in this section, "postsecondary educational institution" means any public university, municipal university, community college and technical college and includes any entity resulting from the consolidation or affiliation of any two or more of such postsecondary educational institutions.

The bill also contains a severability clause.

The bill becomes effective upon the publication in the statute book.