AN ACT relating to education; concerning private and postsecondary
institutions; repealing K.S.A. 72-4916, 72-4919, 72-4920, 72-4921, 72-
4922, 72-4924 through 72-4937, inclusive, 72-4939, 72-4940 and 74-

Be it enacted by the Legislature of the State of Kansas:
Section 1. This act shall be known and may be cited as the “Kansas
private and foreign postsecondary institution act.”
Sec. 2. As used in this act:
(a) “Academic degree” means any associate, bachelor’s, first profes-
sional, master’s, intermediate (specialist) or doctor’s degree.
(b) “Accreditation” refers to accreditation by an agency recognized
by the United States department of education.
(c) “Branch campus” means any subsidiary place of business main-
tained within the state of Kansas by an institution at a site which is sep-
arate from the site of the principal place of business maintained by the
institution and at which subsidiary place of business 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 established pur-
suant to this act.
(e) “Distance education” means any course delivered primarily by
correspondence study, audio, video and/or computer technologies.
(f) “Foreign institution of postsecondary education” means any instit-
tution of postsecondary education chartered, incorporated or otherwise
organized under the laws of any jurisdiction other than this state.
(g) “Institution” means any foreign institution of postsecon-
dary education or private postsecondary institution as defined by
this act.
(h) “Institution employee” means any person, other than an
owner, who directly or indirectly receives compensation from an instit-
tution 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.

"Person" means any individual, firm, partnership, association or corporation.

"Physical presence" exists if the institution employs in Kansas any Kansas resident for the purpose of administering, coordinating, teaching, training, tutoring, counseling, advising or any other activity on behalf of the sponsoring organization, or if the institution delivers, or plans to deliver, instruction in Kansas, and receives assistance from any other organization within the state in delivering the instruction, such as, but not limited to, a cable television company or a television broadcast station that carries instruction sponsored by the institution.

"Private postsecondary institutions" or "institutions" are defined as entities which:
(1) Are business enterprises whether operated on a profit or not-for-profit basis; which have a physical presence within the state of Kansas, or solicit business within the state of Kansas;
(2) offer 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 offer a course or courses leading to an academic degree, except as hereinafter excluded; and
(3) are not specifically exempted by the provisions of this act.

"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.

"State board" means the Kansas board of regents, or such person or persons as may be designated by the state board to administer the provisions of this act.

"Support" or "supported" means the primary source and means by which an institution derives revenue to perpetuate operation of the institution.

"University" refers exclusively to an institution of postsecondary education authorized to offer bachelor degrees together with grad-
uate or first professional degrees.

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

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

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

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

(d) a course or courses of instruction or study sponsored by a recognized trade, business or professional organization having a closed membership for the instruction of the members of the organization, and for which no tuition or other fee is charged to the student;

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

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

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

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

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

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

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

(d) Any state agency having information which will enable the state
board of regents to exercise its powers and perform its duties in administering the provisions of this act shall from time to time as requested furnish such information to the state board of regents.

Sec. 5. (a) The advisory commission on private and foreign postsecondary institutions is hereby created. The commission shall consist of nine members appointed by the state board. Members shall serve from the date of appointment for terms of four years. If a commission member resigns, or is otherwise unable to serve, a new member shall be appointed by the state board to fill the unexpired term. Five members of the commission shall be owners or managers of private postsecondary institutions, at least two of the five members shall represent institutions, which at the time of appointment of such members, have enrollments of under 125 students, and at least one shall represent a degree granting institution. Four members shall be selected from among the following categories: Secondary schools, postsecondary schools, business and industry, the employment community, economic development and health occupations. (b) The commission shall elect one member as chairperson of the commission and such other officers as may be necessary. (c) The commission shall meet at least annually in Topeka during the month of October, and shall conduct special meetings on the call of the chairperson or the state board or at the request of at least four members of the commission. (d) Members of the advisory commission on private and foreign postsecondary institutions attending meetings of such commission, or attending a subcommittee meeting thereof authorized by such commission, shall be paid amounts provided in subsection (e) of K.S.A. 75-3223, and amendments thereto. (e) A majority of the commission is a quorum to conduct business, but no less than four members must concur to pass upon any matter before the commission. (f) The commission may recommend to the state board such policies, regulations, minimum standards and general rules that the commission deems necessary for administering the provisions of this act.

Sec. 6. (a) No private or foreign postsecondary institution may operate within this state without obtaining a certificate of approval from the state board as provided in this act. No private institution of postsecondary education chartered, incorporated or otherwise organized under the laws of this state shall confer or award any degree, whether academic or honorary, unless and until such an 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, institution 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. 7. (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.

(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 office [department] of education without further evidence.

Sec. 8. 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 and/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, city, county, municipal, 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.

(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 in the event a student enrolled by the institution fails to begin a course or withdraws or is discontinued therefrom at any time prior to completion, which 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.

Sec. 9. (a) The state board, upon review of an application for a certificate of approval meeting the requirements of this act shall issue a certificate of approval to the applicant institution. Certificates of approval shall be in a form specified by the state board with advice from the commission. Certificates of approval shall state at least the following information:

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

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

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

(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 applicant private and [or] foreign postsecondary institution and shall be nontransferable. In the event of a change in ownership of a private and [or] foreign postsecondary institution, the new owner must apply within 30 calendar days prior to the change in ownership for a new certificate of approval. The state board may waive the 30 calendar 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 private and [or] foreign postsecondary institution. Whenever a change of 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 calendar days prior to expiration of a certificate of approval, the state board shall forward to the private and [or] foreign postsecondary institution a renewal application form.

(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.

(f) Any institution which does not plan to renew a certificate of ap-
proval must notify the state board at least 60 calendar days prior to the
expiration date of the certificate of approval.

Sec. 10. (a) If the state board, upon review and consideration of an
application for a certificate of approval, determines the applicant to be
unacceptable, the state board shall refuse to issue the certificate and set
forth the reasons for the determination.
(b) If an applicant, upon written notification of refusal by the state
board to issue a certificate of approval, desires to contest such refusal,
the applicant shall notify the state board in writing, within 15 calendar
days after the date of service of such notice of refusal, of the desire to be
heard, and such applicant shall be afforded a hearing in accordance with
the provisions of the Kansas administrative procedure act. Upon conclu-
sion of any such hearing, the state board shall issue a certificate of ap-
proval or a final refusal to do so.
(c) If an applicant, upon service of notice of refusal by the state board
to issue a certificate of approval, fails to request a hearing within 15 cal-
endar days after the date of service of such notice of refusal, the state
board’s refusal shall be final.

Sec. 11. (a) The state board may revoke a certificate of approval or
impose reasonable conditions upon the continued approval represented
by a certificate. Prior to revocation or imposition of conditions upon a
certificate of approval, the state board shall notify the holder of the cer-
tificate in writing of the impending action setting forth the grounds for
the action contemplated to be taken and affording a hearing on a date
within 30 calendar days after the date of such notice. Hearings under this
section shall be conducted in accordance with the provisions of the Kansas
administrative procedure act.
(b) A certificate of approval may be revoked or conditioned if the
state board has reasonable cause to believe that the institution is in vio-
lation of any provision of this act or of any rules and regulations adopted
under this act.

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

Sec. 13. (a) Each representative of an institution shall register with
the state board. Application for registration may be made at any time on
a form prepared and furnished by the state board and shall contain such
information as may be required by the state board.
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(b) Registration of a representative shall be effective upon receipt of notice from the state board and shall remain in effect until expiration of the certificate of approval of the institution employing such representative. Renewal of representative registration shall be in accordance with the renewal application form forwarded to the institution by the state board.

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

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

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

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

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

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

Sec. 16. (a) No person shall:

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

(2) solicit prospective students without being registered as required
by this act;
(3) accept contracts or enrollment applications from a representative who is not registered as required by this act;
(4) use fraud or misrepresentation in advertising or in procuring enrollment of a student;
(5) use the term “accreditation” except as defined in this act; and
(6) use the term “university” in the name or advertisement of the institution unless such institution is a “university” as defined by this act.

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

Sec. 17. Upon application of the attorney general or a county or district attorney, the district courts 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, 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 per person for each violation. For purposes of this section, a willful 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.

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

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

Sec. 20. (a) The state board shall fix, charge and collect fees for certificates of approval, registration of representatives and providing transcripts to students who attended a private postsecondary 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 busi-
ness 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 .............................................................................. $ 1 0

(b) 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 foreign postsecondary
institution act for the next ensuing fiscal year and shall fix the fees au-
thorized 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 on private and foreign
postsecondary institutions an opportunity to make recommendations on
the proposed fees.

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

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

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

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

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

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