

SESSION OF 2020

SUPPLEMENTAL NOTE ON SENATE BILL NO. 354

As Amended by Senate Committee on
Education

Brief*

SB 354, as amended, would amend the Kansas Private and Out-of-State Postsecondary Education Institution Act (Act) to clarify the Kansas Board of Regents' (Board) authority over private and out-of-state institutions.

Certificate of Approval Application

The bill would allow an institution currently exempt from the Act to apply to the Board for a certificate of approval if it is required for the institution to be eligible to receive federal Title IV student financial aid. Any institution that applied for and received a certificate of approval would be subject to the jurisdiction of the Board. The institution could return to exempt status by not renewing the certificate of approval.

The bill would require a certificate of approval be issued to the owner of an institution and such a certificate would not be transferable. If the institution has a change of ownership due to the death of the owner, a court order, or the operation of law, the new owner would be required to immediately apply for a new certificate of approval. If a change of ownership occurs for any other reason, the new owner would be required to apply for a new certificate of approval 60 days prior to the change of ownership. The Board would be allowed to adopt rules and regulations to ensure an orderly transition to a new owner, including requirements regarding the maintenance of all student records.

*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>

The bill would require a court-appointed receiver of an institution with a certificate of approval to provide the Board with notice of appointment and copies of all documents required from the receiver by the court. The receiver would be required to comply with the provisions of the Act.

The bill would allow the Board to assess a civil fine against an institution for violations of the Act. For the first violation, the fine would be limited to up to 1.0 percent of the institution's tuition revenue, with a minimum fine of \$125 and a maximum fine of \$15,000. For subsequent violations, the fine would be limited to up to 2.0 percent of the institution's tuition revenue, with a minimum fine of \$250 and a maximum fine of \$20,000. These fines would be subject to judicial review.

Definitions

The bill would amend the definition of "distance education," "owner of an institution," "physical presence," and "private postsecondary educational institution." The bill would also add a definition for "provisional certificate," which would mean a certificate of approval that can be granted to a degree-granting institution that is not yet accredited but is seeking to establish a physical presence in Kansas.

Exempt Courses and Institutions

The bill would amend law exempting certain types of education and certain institutions from the provisions of the Act. The bill would exempt education offered as a review course designed solely to prepare students for graduate or professional school entrance exams or professional licensure exams. The bill would also list the institutions exempted from the Act:

- Baker University, Baldwin City;
- Barclay College, Haviland;

- Benedictine College, Atchison;
- Bethany College, Lindsborg;
- Bethel College, North, Newton;
- Central Baptist Theological Seminary, Kansas City;
- Central Christian College of Kansas, McPherson;
- Cleveland University–Kansas City, Overland Park;
- Donnelly College, Kansas City;
- Friends University, Wichita;
- Hesston College, Hesston;
- Kansas Christian College, Overland Park;
- Kansas Wesleyan University, Salina;
- Manhattan Christian College, Manhattan;
- McPherson College, McPherson;
- MidAmerica Nazarene University, Olathe;
- Newman University, Wichita;
- Ottawa University, Ottawa;
- Southwestern College, Winfield;
- Sterling College, Sterling;
- Tabor College, Hillsboro; and
- University of Saint Mary, Leavenworth.

Rules and Regulations, Standards

The bill would require the Board to adopt rules and regulations governing the closure of any institution subject to the provisions of the Act. These may include notice requirements, teach-out plans, maintenance of academic records, refund requirements, and transcript requests. Additionally, the bill would require degree-granting institutions that are not yet accredited to make progress toward accreditation. Once accreditation is achieved, an institution would be required to maintain accreditation. The bill would also allow the Board to set additional standards for

institutions that receive federal Title IV student financial aid, including requiring audited financial statements.

Physical Presence of Institution in Kansas

The bill would prohibit an institution from establishing a physical presence in Kansas without obtaining a certificate of approval from the Board.

Notification Requirement and Provisional Certificate of Approval

The bill would require any institution planning on opening a branch campus in Kansas to notify the Board of its intent at least 60 days prior to the opening of the branch campus.

The bill would allow the Board to issue a provisional certificate to a degree-granting institution that is not yet accredited and wishes to establish a physical presence in Kansas. The provisional certificate could be renewed annually as long as the institution continues to progress toward accreditation. The bill would require an institution with a provisional certificate to submit to the Board a plan for achieving accreditation and quarterly updates on the institution's progress toward accreditation. The bill would also allow the Board to adopt rules and regulations imposing additional surety bond requirements for the indemnification of any student for any loss suffered as a result of a failure to achieve full accreditation.

Certificate of Approval Minimum Standards

The bill would add the following to the list of minimum standards an institution must meet to be awarded a certificate of approval:

- An institution would not be allowed to award a certificate or degree based solely on the payment of tuition or fees, credit earned at another institution, credit for life experience, testing out, or research and writing;
- An institution would not be allowed to award an honorary degree if they do not award that same degree and would not be allowed to charge a fee for an honorary degree;
- An institution would be required to maintain adequate financial records, which would require financial aid information and loan default rates for institutions receiving federal Title IV student financial aid;
- An institution would be required to protect students' personally identifiable information and to promptly address any breach of that information; and
- An institution would be required to publish graduation rates, placement rates, and loan default rates as required by the Board.

Certificate of Approval Renewal

The bill would state an application for the renewal of a certificate of approval would be deemed late if it is not submitted at least 60 days prior to the expiration of the institution's certificate. When an application for renewal is deemed late, the Board may require the institution to begin the closure procedure. The bill would also require any institution that is closing, either voluntarily or involuntarily, to follow the closure requirements until notified by the Board that all requirements are satisfied.

Board Refusal to Issue Certificate of Approval and Appeal Process

The bill would update and clarify language regarding refusals by the Board to issue a certificate of approval and the process to request a hearing to contest such a refusal.

Conditional Certificate of Approval

The bill would allow the Board to condition a certificate of approval if the Board has reasonable cause to believe additional information is necessary, a violation of the Act occurred, or it is in the students' best interests for the institution to continue operating while completing closure requirements. The conditions imposed by the Board may include reporting requirements, performance standard requirements, securing new or additional bonds, limiting the period of time to operate during change or ownership, or for the purpose of teaching out students. The Board may require an institution with a conditional certificate of approval to suspend or cease institutional activities, including enrolling students and advertising or delivering certain classes or programs. The Board-imposed conditions would remain in effect until all the circumstances causing the conditional status are corrected and the Board has completed all reviews related to the institution's conditional status.

Revocation of Certificate of Approval

The bill would amend language related to the revocation of certificates of approval. The bill would prohibit any institution that has had a certificate of approval revoked from applying for a new certificate for 12 months after the final order of revocation. After that 12-month period, an institution could apply for a certificate of approval only if the Board agrees the institution has cured all deficiencies. Prior to revoking an institution's certificate of approval, the Board would be required to give written notice to the holder of the

certificate. Such written notice must include the grounds for the revocation and notification that the institution may request a hearing on the revocation of the certificate of approval. If a hearing is requested, it must be conducted within 30 days after the written notice was sent.

Requirements of Institution and Employees

The bill would require an institution, including its officers, agents, representatives, and employees, to comply with the provisions of the Act and any rules and regulations adopted by the Board, including, but not limited to, the protection of students' personally identifiable information.

Prohibited Actions under the Act

The bill would prohibit the use of fraud or misrepresentation to obtain a certificate of approval. The Board would be allowed to revoke or condition a certificate of approval for any violation of the Act.

Civil Fines

The bill would increase from \$5,000 to \$20,000 the maximum civil penalty for intentional acts.

Statewide Data Collection

The bill would specify an institution would be in violation of the Act for failure to submit complete and accurate data on a timely basis when requested by the Board.

Technical Amendments

The bill would make technical amendments.

Background

The bill was introduced by the Senate Committee on Education at the request of the Board. In the Senate Committee hearing, a representative of the Board provided proponent testimony. The representative stated the bill would amend the Act to align with best practices and would provide increased consumer protections and institutional accountability. Written-only proponent testimony was provided by a representative of the Kansas Independent College Association. No opponent or neutral testimony was provided.

The Senate Committee amended the bill to correct the names of several institutions specifically exempted from the provisions of the Act, including Central Christian College of Kansas and Cleveland University–Kansas City.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Board indicates the bill could increase fines from civil penalties that are remitted to the State General Fund, but a precise estimate cannot be determined. Additionally, the Board anticipates no additional fee revenue from enactment of the bill since no new institutions would be brought under the scope of the Act by the bill. Any fiscal effect associated with enactment of the bill is not included in *The FY 2021 Governor's Budget Report*.