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MEMORANDUM

To: Chairman Huebert
Members of the House Committee on Education

From: Jason B. Long, Senior Assistant Revisor

Date: March 10, 2020

Subject: SB 354 – Amendments to the Kansas Private and Out-of-State
Postsecondary Educational Institution Act.

Senate Bill No. 354 (SB 354) would amend the Kansas Private and Out-of-State Postsecondary Educational Institution Act (Act) to clarify the State Board of Regent's authority over private and out-of-state institutions and allow for additional student protections and institutional accountability. The first four section of the bill are new and the remaining 20 sections amend current law.

The State Board of Regents (Board) regulates private and out-of-state postsecondary institutions that are subject to the Act (K.S.A. 74-32,162 et seq.). The Board administers and implements the Act, including authorizing private and out-of-state postsecondary educational institutions to operate in Kansas through issuance of a certificate of approval, unless the institution is exempt from the Board's regulatory authority.

New Sections 1 through 4 of SB 354 would create new law with respect to certificates of approval issued by the Board. Section 1 would allow an institution that is exempt from the Act because it is otherwise regulated and approved to operate pursuant to other state law to apply to the Board for a certificate of approval if the certificate is required for the institution to be eligible to receive Title IV funding. If an institution applies for and receives a certificate of approval under this section, such institution would be subject to the jurisdiction of the Board. The institution may return to exempt status by not applying to renew the certificate of approval.

Sections 2 through 4 would recodify provisions relating to certificates of approval in general. Section 2 would require a certificate of approval be issued to the owner of the institution and shall not be transferrable. If the institution has a change of ownership due to death, a court

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order or operation of law, the new owner shall immediately apply for a new certificate of approval. If a change of ownership occurs for any other reason, the new owner must apply for a new certificate of approval 60 days prior to the change of ownership.

Section 3 would provide that if an institution is placed in receivership, the receiver shall provide the Board notice of the appointment and copies of all documents required from the receiver by the court. It would also require the receiver to comply with the Act.

Finally, Section 4 would allow the Board to assess a civil fine against an institution for violations of the Act. For a first violation, the fine would be limited to up to 1% of the institution's tuition revenue but shall not be less than \$125 and not more than \$15,000. For a subsequent violation, the fine would be limited to up to 2% of the institution's tuition revenue but shall not be less than \$250 and not more than \$20,000. Any money collected as fines under this section would be credited to the state general fund.

Section 6 of SB 354 amends K.S.A. 74-32,163 regarding various definitions used in the Act. It would amend the definition of "distance education," "owner of an institution," "physical presence," and "private postsecondary educational institution." Additionally, it would add a definition for "provisional certificate" that would mean a certificate of approval awarded to a degree-granting institution seeking to establish a physical presence in Kansas but not yet accredited. An institution with a provisional certificate would be allowed to operate in Kansas but only under certain conditions of the state board of regents.

Section 7 amends K.S.A. 74-32,164 regarding institutions that are exempt from the Act. It would specifically exempt education offered as an intensive review course designed solely to prepare students for graduate or professional school entrance exams or professional licensure. Additionally, it would explicitly list in statute the institutions that are exempt from the Act because they were either exempt under K.S.A. 17-6105, prior to its repeal, or previously exempt from the act and have approval to confer academic or honorary degrees in calendar year 2020.

Section 8 amends K.S.A. 74-32,165 to require the Board to adopt rules and regulations that impose certain requirements on any institution that is closing, such as notice requirements, refund requirements, maintenance of academic records and transcript requests. Additionally, it would require degree-granting institutions that are not yet accredited to make progress toward accreditation and once accreditation is achieved, the institution would be required to maintain accreditation.

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Sections 9 through 15 and 17 amend various provisions of the Act regarding certificates of approval. Section 9 amends K.S.A. 74-32,167 to clarify that an institution cannot establish a physical presence in Kansas unless it has obtained a certificate of approval.

Section 10 amends K.S.A. 74-32,168 to require an institution to notify the Board that it intends to open a branch campus at least 60 days prior to opening such branch campus. It also authorizes the Board to issue a provisional certificate of approval to an institution that is not yet accredited. A provisional certificate of approval may be renewed annually so long as the institution continues to progress toward accreditation. The institution would be required to submit a plan for achieving accreditation and would be required to submit quarterly updates on its progress toward accreditation.

Additionally, Section 10 would 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.

Section 11 amends K.S.A. 74-32,169 to add to the list of minimum standards an institution must meet to be awarded a certificate of approval. The new minimum standards include: (1) An institution would not be allowed to award credentials based solely on payment of tuition or fees, credit earned at another institution, credit for life experience, testing out or research and writing; (2) an institution would not be allowed to award honorary degrees if it does not award earned degrees and would not be allowed to charge for an honorary degree; (3) an institution would be required to maintain adequate financial records; (4) an institution would be required to protect students' personally identifiable information and promptly address any breach of that information; and (5) an institution would be required to publish graduation rates, placement rates and loan default rates as required by the state board of regents.

Section 12 amends K.S.A. 74-32,170 to state that an application for renewal of a certificate of approval shall be deemed late if it is not submitted at least 60 days prior to the expiration of the institution's certificate of approval. If an application is deemed late, the state board of regents may require the institution to begin the closure procedure.

Section 13 amends K.S.A. 74-32,171 to update and clarify the language regarding refusals to issue a certificate of approval and the notice and opportunity to request a hearing. Section 14 amends K.S.A. 74-32,172 to allow the Board to condition a certificate of approval at any time 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 interest for the institution to continue operating while completing closure requirements. The conditions imposed may include reporting requirements,

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performance standard requirements, securing new or additional bonds limiting the period of time to operate for the purpose of teaching out students. The 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 status. Finally, Section 15 amends K.S.A. 74-32,173 to add new Section 4 to the list of statutes that are subject to judicial review.

Section 17 amends K.S.A. 74-32,177 to prohibit fraud or misrepresentation to obtain a certificate of approval. Additionally, it would allow the Board to revoke or condition a certificate of approval for any violation of the Act.

Section 16 amends K.S.A. 74-32,175 to require an institutions officers, agents, representatives and other employees to comply with the Act and any rules and regulations adopted thereunder, including, but not limited to, protecting students' personally identifiable information.

Section 18 amends K.S.A. 74-32,178 to increase the maximum civil penalty for intentional acts from \$5,000 to \$20,000.

Section 20 amends K.S.A. 74-32,182 to require any moneys received pursuant to the Act to be credited to the private and out-of-state postsecondary educational institution fee fund unless credited to the state general fund pursuant to new Section 4 or another fund pursuant to the Act.

Section 21 amends K.S.A. 74-32,184 to state that an institution would be in violation of the Act for failure to submit complete and substantially accurate data on a timely basis when requested by the Board.

Sections 19, 22, and 23 would make conforming amendments to implement the substantive amendments described above.

SB 354 passed the Senate on final action by a vote of 37-3. If enacted, SB 354 would become effective on July 1, 2020.