

## **Private and Out-of-State Postsecondary Education; SB 64**

**SB 64** amends the Kansas Private and Out-of-State Postsecondary Education Institution Act (Act) to clarify the State Board of Regents' (Board) authority over private and out-of-state institutions.

### ***Certificate of Approval Application***

The bill allows an institution 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 student financial aid under Title IV of the federal Higher Education Act of 1965. Any institution that applies for and receives a certificate of approval is subject to the jurisdiction of the Board. The institution can return to exempt status by not renewing the certificate of approval.

The bill requires a certificate of approval be issued to the owner of an institution, and such a certificate is not 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 is required to immediately apply for a new certificate of approval. If a change of ownership occurs for any other reason, the new owner is required to apply for a new certificate of approval 60 days prior to the change of ownership. The bill authorizes the Board to adopt rules and regulations to ensure an orderly transition to a new owner, including requirements regarding the maintenance of all student records.

The bill requires 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 must comply with the provisions of the Act.

The bill allows the Board to assess a civil fine against an institution for violations of the Act. For the first violation, the fine is 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 is 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 are subject to judicial review.

### ***Definitions***

The bill amends the definitions of "distance education," "out-of-state postsecondary educational institution," "owner of an institution," "physical presence," and "private postsecondary educational institution." The bill also adds a definition for "provisional certificate," which means 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 amends law exempting certain types of education and certain institutions from the provisions of the Act. The bill exempts education offered as a review course designed solely to prepare students for graduate or professional school entrance exams or professional

licensure exams. Institutions actively regulated by another agency under another statute are also exempt and receive an affirmative approval to operate in Kansas. The bill also lists 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 requires 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 requires degree-granting institutions that are not yet accredited to make progress toward accreditation. Once accreditation is achieved, an institution is required to maintain accreditation. The bill allows 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 prohibits 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 requires 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 allows 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 can be renewed annually as long as the institution continues to progress toward accreditation. The bill requires 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 also allows 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 adds the following to the list of minimum standards an institution must meet to be awarded a certificate of approval:

- An institution is not 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 is not allowed to award an honorary degree if it does not award that same degree and is not allowed to charge a fee for an honorary degree;
- An institution must maintain adequate financial records, which include financial aid information and loan default rates for institutions receiving federal Title IV student financial aid;
- An institution must protect students' personally identifiable information and promptly address any breach of that information; and
- An institution must publish graduation rates, placement rates, and loan default rates as required by the Board.

### ***Certificate of Approval Renewal***

The bill states an application for the renewal of a certificate of approval will 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 also requires 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 updates and clarifies 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 allows 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, and limiting the period of time to operate during change or ownership, or be 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 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 amends language related to the revocation of certificates of approval. The bill prohibits 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 may 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 is 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 requires 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 prohibits the use of fraud or misrepresentation to obtain a certificate of approval. The Board can revoke or condition a certificate of approval for any violation of the Act.

***Civil Fines***

The bill increases the maximum civil penalty for an intentional violation from \$5,000 to \$20,000.

***Statewide Data Collection***

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