

## **Kansas private and out-of-state postsecondary educational institution act.**

**74-32,162.** 74-32, 162 through 74-32, 183 shall be known and may be cited as the Kansas private and out-of-state postsecondary educational institution act.

**74-32,163.** As used in the Kansas private and out-of-state postsecondary educational institution act:

- (a) “Academic degree” means any associate, bachelor’s, first professional, master’s, intermediate (specialist) or doctor’s degree.
- (b) “Accreditation” means an accreditation by an agency recognized by the United States department of education.
- (c) “Branch campus” means any subsidiary place of business maintained within the state of Kansas by an institution at a site which is separate from the site of the institution’s principal place of business and at which 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 on private and out-of-state postsecondary educational institutions established pursuant to this act.
- (e) “Distance education” means any course delivered primarily by use of correspondence study, audio, video or computer technologies.
- (f) “Out-of-state postsecondary educational institution” means a postsecondary educational institution chartered, incorporated or otherwise organized under the laws of any jurisdiction other than the state of Kansas.
- (g) “Institution” means an out-of-state or private postsecondary educational institution.
- (h) “Institution employee” means any person, other than an owner, who directly or indirectly receives compensation from an institution 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.
- (j) “Person” means an individual, firm, partnership, association or corporation.
- (k) “Physical presence” means the employment in Kansas of a Kansas resident for the purpose of administering, coordinating, teaching, training, tutoring, counseling, advising or any other activity on behalf of the institution, or the delivery of, or the intent to deliver, instruction in Kansas with the assistance from any entity within the state in delivering the instruction including, but not limited to, a cable television company or a television broadcast station that carries instruction sponsored by the institution.
- (l) “Private postsecondary educational institution” means an entity which:(1) Is a business enterprise, whether operated on a profit or not-for profit basis, which has a physical presence within the state of Kansas or which solicits business within the state of Kansas;(2) offers 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 which offers a course or courses leading to an academic degree; and(3) is not specifically exempted by the provisions of this act.
- (m) “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.
- (n) “State board” means the Kansas board of regents or the board’s designee.
- (o) “Support” or “supported” means the primary source and means by which an institution derives revenue to perpetuate operation of the institution.
- (p) “University” means a postsecondary educational institution authorized to offer bachelor degrees together with graduate or first professional degrees.

- (q) “State educational institution” means any state educational institution as defined by K.S.A. 76-711, and amendments thereto.
- (r) “This act” means the Kansas private and out-of-state postsecondary educational institution act.
- 74-32,164.** The Kansas private and out-of-state postsecondary educational institution act shall not apply to:
- (a) An 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;
  - (h) the Kansas City college and bible school, inc.; and
  - (i) any postsecondary educational institution which was granted approval to confer academic or honorary degrees by the state board of education under the provisions of K.S.A. 17-6105 prior to its repeal.

**74-32, 165.**

- (a) The state board 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 institutions which qualify for approval to confer or award academic degrees. Such standards shall be consistent with standards applicable to state educational institutions under the control and supervision of the state board
- (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 to exercise its powers and perform its duties in administering the provisions of this act shall furnish such information when requested by the state board.

**74-32, 166.**

- (a) The advisory commission on private and out-of-state postsecondary educational institutions is hereby created. The commission shall consist of nine members appointed by the state board. Except as provided by this section, members shall be appointed for terms of four years. Vacancies shall be filled by the state board for the unexpired term. Five members of the commission shall be owners or managers of private postsecondary educational 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 persons representing: Secondary schools, postsecondary schools, business and industry, members of the employment community, economic development interests of the state 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 once 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 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, minimum standards and rules and regulations that the commission deems necessary for administering the provisions of this act.

**74-32,167.**

- (a) No institution may operate within this state without obtaining a certificate of approval from the state board as provided in this act. No institution shall confer or award any degree, whether academic or honorary, unless such 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, 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.

**74-32,168.**

- (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 department of education without further evidence.

**74-32,169.** 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 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, 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; and
- (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 if a student enrolled by the institution fails to begin a course or withdraws or is discontinued there-from at any time prior to completion. Such 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.

**74-32,170.**

- (a) After review of an application for a certificate of approval and if the state board determines that the institution meets the requirements of this act, the state board shall issue a certificate of approval to the institution. Certificates of approval shall be in a form specified by the state board. Certificates of approval shall state:(1) The date of issuance and term of approval;(2) the correct name and address of the institution;(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; and(4) any other information required by the state board.
- (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 institution and shall not be transferable. If a change in ownership of an institution occurs, the new owner shall apply within 30 days prior to the change in ownership for a new certificate of approval. The state board may waive the thirty-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 institution. Whenever a change in 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 days prior to expiration of a certificate of approval, the state board shall forward to the 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 approval shall notify the state board of its intent not to renew at least 60days prior to the expiration date of the certificate of approval.

**74-32,171.**

- (a) After review of an application for a certificate of approval and if the state board determines that the applicant does not meet the requirements of this act, 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 days after the date of service of such notice of refusal, of the desire to be heard. Such applicant shall be afforded a hearing in accordance with the provisions of the Kansas administrative procedure act. Upon conclusion of any such hearing, the state board shall issue a certificate of approval 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 days after the date of service of such notice of refusal, the state board's refusal shall be final.

**74-32,172.**

- (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 give written notice to the holder of the certificate of the impending action setting forth the grounds for the action contemplated to be taken and affording a hearing on a date within 30 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 violation of any provision of this act or of any rules and regulations adopted under this act.

**74-32,173.** Any action of the state board pursuant to sections 10,11 or 12, and amendments thereto, is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. If it appears to the state board on the basis of its own inquiries or investigations or as a result of a complaint that any provision of this act has been or may be violated, the state board may request the attorney general to institute an action enjoining such violation or for an order directing compliance with the provisions of this act.

**74-32,174.**

- (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.
- (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.

**74-32,175.**

- (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 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.

**74-32,176.**

- (a) Subject to the provisions of subsection, no tuition in an amount greater than \$350 shall be collected from a student by any institution 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 maybe retained by an institution from any student who fails to enter the institution.

**74-32,177.**

- (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 “accredited” in the name or advertisement of the institution unless such institution is accredited 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.

**74-32,178.** Upon application of the attorney general or a county or district attorney, a district court 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 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

**74-32,179.** 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 has 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.

**74-32,180.** 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.

**74-32,181.**

(a) The state board shall fix, charge and collect fees for certificates of approval, registration of representatives and providing transcripts to students who attended an institution that has ceased operation by adopting rules and regulations for such purposes, subject to the following limitations:

For institutions domiciled or having their principal place of business within the state of Kansas:

- Initial issuance of certificate of approval non degree granting—not more than .. \$1,700
- Initial issuance of certificate of approval degree granting — not more than . . . . \$2,000
- Renewal of certificate of approval non degree 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

For institutions domiciled or having their principal place of business outside the state of Kansas:

- Initial issuance of certificate of approval non degree granting—not more than . . \$3,400
- Initial issuance of certificate of approval degree granting — not more than . . . . \$3,800
- Renewal of certificate of approval non degree 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 . . . \$10

(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 out-of-state postsecondary educational institution act for the next ensuing fiscal year and shall fix the fees authorized 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 an opportunity to make recommendations on the proposed fees.

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

**74-32,182.**

(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 remitted in the state treasury and shall credit the same to the private and out-of-state postsecondary educational institution fee fund to be used for the purpose of administering this act. All expenditures from such fee fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the state board or the board's designee.

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

**74-32,183.** If any clause, paragraph, subsection or section of the Kansas private and out-of-state postsecondary educational institution act is found to 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.