

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 123

Introduced by Pansing Brooks, 28.

Read first time January 06, 2017

Committee:

1 A BILL FOR AN ACT relating to postsecondary educational institutions; to
2 amend sections 85-173, 85-2401, 85-2403, and 85-2405, Reissue
3 Revised Statutes of Nebraska; to define and redefine terms; to
4 provide duties; to establish the Guaranty Recovery Cash Fund; to
5 assess for-profit postsecondary institutions; to require bonds or
6 other security agreements; to authorize claims resulting from the
7 termination of operations; to change and eliminate provisions
8 relating to educational institutions ceasing to function; to
9 harmonize provisions; to repeal the original sections; and to
10 outright repeal section 85-175, Reissue Revised Statutes of
11 Nebraska.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 85-173, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 85-173 The trustees or officers of any college or other
4 postsecondary institution of learning, whether incorporated or not, upon
5 going out of existence or ceasing to function as an educational
6 institution, shall ~~may~~ turn over its records of all grades, attained by
7 its students, to the registrar of the University of Nebraska, to be
8 preserved by his or her office as a central depository for this valuable
9 historical material.

10 Sec. 2. Section 85-2401, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 85-2401 Sections 85-2401 to 85-2421 and sections 5 to 11 of this act
13 shall be known and may be cited as the Postsecondary Institution Act.

14 Sec. 3. Section 85-2403, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 85-2403 For purposes of the Postsecondary Institution Act:

17 (1) Authorization to operate means either an authorization to
18 operate on a continuing basis or a recurrent authorization to operate;

19 (2) Authorization to operate on a continuing basis means approval by
20 the commission to operate a postsecondary institution in this state
21 without a renewal requirement and once such authorization has been issued
22 it continues indefinitely unless otherwise suspended, revoked, or
23 terminated, including such authorizations previously deemed to be
24 effective as of May 5, 2011, pursuant to the Postsecondary Institution
25 Act for private and out-of-state public postsecondary institutions that
26 had been continuously offering four-year undergraduate programs with a
27 physical presence in the state for at least twenty academic years and for
28 Nebraska public postsecondary institutions;

29 (3) Branch facility means a facility in Nebraska (a) which is
30 separate from a principal facility, (b) which offers a full program and
31 full student services, (c) which is under the supervision of an onsite

1 director or administrator, and (d)(i) the ownership, management, and
2 control of which are the same as the principal facility, which principal
3 facility is responsible for the delivery of all services, or (ii) at
4 which education is offered by a franchisee of a franchisor authorized to
5 operate as a postsecondary institution by the act;

6 (4) ~~(3)~~ Commission means the Coordinating Commission for
7 Postsecondary Education;

8 (5) Executive director means the executive director of the
9 commission or his or her designee;

10 (6) For-profit postsecondary institution means any private
11 postsecondary institution that is not exempt for federal tax purposes
12 under section 501(c)(3) as defined in section 49-801.01;

13 (7) Nebraska public postsecondary institution means any public
14 postsecondary institution established, operated, and governed by this
15 state or any of its political subdivisions;

16 (8) Out-of-state public postsecondary institution means any public
17 postsecondary institution established, operated, and governed by another
18 state or any of its political subdivisions;

19 (9)(a) Physical ~~(4)(a) Establishing a physical~~ presence means:

20 (i) Offering a course for college credit or a degree program in this
21 state that leads to an associate, baccalaureate, graduate, or
22 professional degree, including:

23 (A) Establishing a physical location in this state where a student
24 may receive synchronous or asynchronous instruction; or

25 (B) Offering a course or program that requires students to
26 physically meet in one location for instructional purposes more than once
27 during the course term; or

28 (ii) Establishing an administrative office in this state, including:

29 (A) Maintaining an administrative office in this state for purposes
30 of enrolling students, providing information to students about the
31 institution, or providing student support services;

1 (B) Providing office space to staff, whether instructional or
2 noninstructional staff; or

3 (C) Establishing a mailing address in this state.

4 (b) Physical presence does not include:

5 (i) Course offerings in the nature of a short course or seminar if
6 instruction for the short course or seminar takes no more than twenty
7 classroom hours and the institution offers no more than two courses as
8 defined by the commission in a calendar year;

9 (ii) Course offerings on a military installation solely for military
10 personnel or civilians employed on such installation;

11 (iii) An educational experience arranged for an individual student,
12 such as a clinical, practicum, residency, or internship; or

13 (iv) Courses offered online or through the United States mail or
14 similar delivery service which do not require the physical meeting of a
15 student with instructional staff;

16 ~~(5) Executive director means the executive director of the~~
17 ~~commission or his or her designee;~~

18 ~~(6) Nebraska public postsecondary institution means any public~~
19 ~~institution established, operated, and governed by this state or any of~~
20 ~~its political subdivisions that provides postsecondary education;~~

21 ~~(7) Out-of-state public postsecondary institution means any public~~
22 ~~institution with a physical presence in Nebraska that is established,~~
23 ~~operated, and governed by another state or any of its political~~
24 ~~subdivisions and that provides postsecondary education;~~

25 ~~(10) (8) Postsecondary institution means any private postsecondary~~
26 ~~institution, out-of-state public postsecondary institution, or Nebraska~~
27 ~~public postsecondary institution with a physical presence in Nebraska~~
28 ~~that provides postsecondary education and is exempt from the Private~~
29 ~~Postsecondary Career School Act;~~

30 ~~(11) Principal facility means the primary physical presence in~~
31 ~~Nebraska of a postsecondary institution;~~

1 (12) ~~(9)~~ Private postsecondary institution means any Nebraska or
2 out-of-state nonpublic postsecondary institution ~~with a physical presence~~
3 ~~in Nebraska,~~ including any for-profit postsecondary institution or
4 nonprofit postsecondary institution, ~~that provides postsecondary~~
5 education; and

6 (13) ~~(10)~~ Recurrent authorization to operate means approval by the
7 commission to operate a postsecondary institution in this state until a
8 renewal of such authorization is required.

9 Sec. 4. Section 85-2405, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 85-2405 The commission has the following powers and duties:

12 (1) To establish levels for recurrent authorizations to operate
13 based on institutional offerings;

14 (2) To receive, investigate as it may deem necessary, and act upon
15 applications for a recurrent authorization to operate and applications to
16 renew a recurrent authorization to operate;

17 (3) To establish reporting requirements by campus location either
18 through the federal Integrated Postsecondary Education Data System, 20
19 U.S.C. 1094(a)(17), as such section existed on January 1, 2011, and 34
20 C.F.R. 668.14(b)(19), as such regulation existed on January 1, 2011, or
21 directly to the commission for any postsecondary institution which has an
22 authorization to operate;

23 (4) To maintain a list of postsecondary institutions which have
24 authorization to operate, which list shall be made available to the
25 public;

26 (5) After consultation with the State Department of Education
27 regarding the potential impact of such agreement and any modifications
28 thereto on Nebraska students who may participate in distance education
29 offered by out-of-state private postsecondary career schools, to enter
30 into interstate reciprocity agreements for the provision of postsecondary
31 distance education across state boundaries;

1 (6) To administer interstate reciprocity agreements entered into
2 pursuant to subdivision (5) of this section and to approve or disapprove,
3 consistent with such agreements, participation in such agreements by
4 postsecondary institutions that have their principal place of business in
5 Nebraska and that choose to participate in such agreements;

6 (7) To establish a notification process when a postsecondary
7 institution which has an authorization to operate changes its address or
8 adds instructional sites within this state;

9 (8) To conduct site visits of postsecondary institutions to carry
10 out the Postsecondary Institution Act;

11 (9) To establish fees for applications for a recurrent authorization
12 to operate, applications to renew or modify a recurrent authorization to
13 operate, and applications to participate or continue participation in an
14 interstate postsecondary distance education reciprocity agreement, which
15 fees shall be not more than the cost of reviewing and evaluating the
16 applications;

17 (10) To receive, evaluate, approve, and pay claims pursuant to
18 section 9 of this act, assess for-profit postsecondary institutions
19 pursuant to section 7 of this act, and administer the Guaranty Recovery
20 Cash Fund;

21 (11) ~~(10)~~ To investigate any violations of the act by a
22 postsecondary institution; and

23 (12) ~~(11)~~ To adopt and promulgate rules, regulations, and procedures
24 to administer the act and the Guaranty Recovery Cash Fund.

25 Sec. 5. The Guaranty Recovery Cash Fund is hereby established. The
26 fund shall receive assessments imposed by the commission pursuant to
27 section 6 of this act and shall be used by the commission to pay claims
28 authorized pursuant to section 9 of this act. Any money in the fund
29 available for investment shall be invested by the state investment
30 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
31 State Funds Investment Act. Any interest earned on the money in the fund

1 shall accrue to the fund.

2 Sec. 6. (1) The commission shall annually assess each for-profit
3 postsecondary institution one-tenth of one percent of the prior school
4 year's gross tuition revenue until the Guaranty Recovery Cash Fund
5 reaches the minimum fund level. The fund shall be maintained at a minimum
6 fund level of two hundred fifty thousand dollars and a maximum fund level
7 of five hundred thousand dollars. At any time when the fund drops below
8 the minimum fund level, the commission may resume the assessment. Funds
9 in excess of the maximum fund level shall be used as directed by the
10 commission to provide grants or scholarships for students attending for-
11 profit postsecondary institutions in Nebraska.

12 (2) The commission shall require documentation from each for-profit
13 postsecondary institution to verify the tuition revenue collected by the
14 institution and to determine the amount of the assessment under this
15 section.

16 (3) Any for-profit postsecondary institution applying for an initial
17 recurrent authorization to operate shall not be assessed under this
18 section for the first year of operation but shall be assessed each year
19 thereafter for four years or until the fund reaches the minimum fund
20 level, whichever occurs last, and shall maintain the surety bond or other
21 security required by section 7 of this act.

22 (4) If a for-profit postsecondary institution fails to comply with
23 this section, its authorization to operate shall be subject to
24 revocation.

25 (5) The commission shall remit all funds collected pursuant to this
26 section to the State Treasurer for credit to the Guaranty Recovery Cash
27 Fund.

28 Sec. 7. Until the Guaranty Recovery Cash Fund initially reaches the
29 minimum fund level prescribed in section 6 of this act, when an
30 application is made for an initial recurrent authorization to operate,
31 the commission may require any for-profit postsecondary institution

1 making such application to file with the commission a good and sufficient
2 surety bond or other security agreement in a penal amount deemed
3 satisfactory by the commission. Such bond or other security shall cover
4 both principal and branch facilities. The bond or agreement shall be
5 executed by the applicant as principal and by a surety company qualified
6 and authorized to do business in the state. The bond or agreement shall
7 be conditioned to provide indemnification to any student or enrollee or
8 his or her parent or guardian determined to have suffered loss or damage
9 by the termination of operations by the for-profit postsecondary
10 institution. The surety shall pay any final judgment rendered by any
11 court of this state having jurisdiction upon receipt of written
12 notification of the judgment. Regardless of the number of years that such
13 bond or agreement is in force, the aggregate liability of the surety
14 thereon shall in no event exceed the penal sum of the bond or agreement.
15 The bond or agreement may be continuous.

16 Sec. 8. (1) Until the Guaranty Recovery Cash Fund initially reaches
17 the minimum fund level prescribed in section 6 of this act, the bond or
18 other security agreement of an institution provided for in section 7 of
19 this act shall cover the period of the recurrent authorization to operate
20 except when a surety is released as provided in this section.

21 (2) A bond or other security agreement filed under section 7 of this
22 act may be released after such surety serves written notice on the
23 commission thirty days prior to the release. Such release shall not
24 discharge or otherwise affect any claim previously or subsequently filed
25 by a student or enrollee or his or her parent or guardian provided for in
26 section 9 of this act for the termination of operations by the for-profit
27 postsecondary institution during the term for which tuition has been paid
28 while the bond or agreement was in force.

29 (3) During the term of the bond or agreement and upon forfeiture of
30 the bond or agreement, the commission retains a property interest in the
31 surety's guarantee of payment under the bond or agreement which is not

1 affected by the bankruptcy, insolvency, or other financial incapacity of
2 the operator or principal on the bond or agreement.

3 Sec. 9. (1) The money in the Guaranty Recovery Cash Fund shall be
4 used in the following order of priority:

5 (a) To reimburse any student injured by the termination of
6 operations by a for-profit postsecondary institution on or after the
7 effective date of this act for the cost of tuition and fees. A student
8 injured by the termination of operations by a for-profit postsecondary
9 institution means (i) a student who has paid tuition and fees to the
10 institution for which classes were offered but not finished due to
11 termination of operations, (ii) a student who has paid tuition and fees
12 to the institution for which classes were not offered and no refunds were
13 made, and (iii) a student who ceased to be enrolled in classes at an
14 institution while the institution was in operation and to whom a refund
15 of unearned tuition and fees became due from the institution after the
16 institution terminated operations and no refunds were made within the
17 institution's required time period following the student's withdrawal
18 from the institution;

19 (b) To reimburse any former student of a for-profit postsecondary
20 institution that has terminated operations on or after the effective date
21 of this act for the cost of obtaining such student's student records;

22 (c) To reimburse the University of Nebraska for reasonable expenses
23 directly associated with the storage and maintenance of academic records
24 pursuant to sections 85-173 and 85-174 of those students adversely
25 affected by termination of operations by a for-profit postsecondary
26 institution; and

27 (d) To reimburse the Nebraska Opportunity Grant Fund for any funds
28 distributed to a for-profit postsecondary institution for an academic
29 term that was not completed by students receiving awards under the
30 Nebraska Opportunity Grant Act due to the termination of operations by a
31 for-profit postsecondary institution after the effective date of this act

1 to the extent such funds are not returned to the Nebraska Opportunity
2 Grant Fund by the for-profit postsecondary institution.

3 (2) No claim shall be allowed unless the claim is submitted within
4 one year after the termination of operations by the for-profit
5 postsecondary institution and there are sufficient funds available in the
6 Guaranty Recovery Cash Fund to pay the claim.

7 Sec. 10. A for-profit postsecondary institution may include
8 references to the Guaranty Recovery Cash Fund in advertising or
9 information provided to students or prospective students. Any such
10 reference shall clearly describe the protection and limitations
11 prescribed in section 9 of this act and the relevant rules and
12 regulations adopted and promulgated by the commission.

13 Sec. 11. On or before November 1 of each year, the commission shall
14 submit electronically a report to the Governor and the Legislature
15 containing:

16 (1) The number of claims made against the Guaranty Recovery Cash
17 Fund;

18 (2) The institutions against which the claims are made;

19 (3) The number of claims that are approved and the associated
20 payouts from the funds;

21 (4) The number of claims that are denied; and

22 (5) The amount of money in the Guaranty Recovery Cash Fund used to
23 reimburse the Nebraska Opportunity Grant Fund.

24 Sec. 12. Original sections 85-173, 85-2401, 85-2403, and 85-2405,
25 Reissue Revised Statutes of Nebraska, are repealed.

26 Sec. 13. The following section is outright repealed: Section
27 85-175, Reissue Revised Statutes of Nebraska.