

LEGISLATIVE BILL 637

Approved by the Governor May 4, 2011

Introduced by Adams, 24.

FOR AN ACT relating to education; to amend sections 77-2704.12, 79-757, 85-943, 85-961, 85-1604, 85-1620, and 85-1643, Reissue Revised Statutes of Nebraska, sections 85-1412 and 85-2105, Revised Statutes Cumulative Supplement, 2010, section 38-2622, Reissue Revised Statutes of Nebraska, as amended by section 4, Legislative Bill 334, One Hundred Second Legislature, First Session, 2011, and section 9-812, Revised Statutes Cumulative Supplement, 2010, as amended by section 1, Legislative Bill 333, One Hundred Second Legislature, First Session, 2011; to adopt the Postsecondary Institution Act; to provide and eliminate sales tax exemption provisions, authorization requirements, and penalties relating to out-of-state institutions of higher education and private colleges; to change provisions relating to the Education Innovation Fund, the Nebraska Optometry Education Assistance Contract Program, authorized offerings of the University of Nebraska and community colleges, the Private Postsecondary Career School Act, and the Access College Early Scholarship Program; to provide for a pilot project for the administration of a standard college admission test; to provide and eliminate duties of the Coordinating Commission for Postsecondary Education; to harmonize provisions; to repeal the original sections; to outright repeal sections 85-1101, 85-1102, 85-1103, 85-1103.01, 85-1103.02, 85-1104, 85-1105, 85-1106, 85-1107, 85-1108, 85-1109, 85-1110, 85-1110.01, and 85-1111, Reissue Revised Statutes of Nebraska; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 21 of this act shall be known and may be cited as the Postsecondary Institution Act.

Sec. 2. The purposes of the Postsecondary Institution Act are to ensure that minimum standards of operation are met by both private and out-of-state postsecondary institutions operating in Nebraska and to provide for consumer protection for students who enroll in higher education programs in this state.

Sec. 3. For purposes of the Postsecondary Institution Act:

(1) Authorization to operate means approval by the commission to operate a postsecondary institution in this state;

(2) Authorization to operate on a continuing basis means approval by the commission to operate a postsecondary institution in this state without a renewal requirement;

(3) Commission means the Coordinating Commission for Postsecondary Education;

(4) (a) Establishing a physical presence means:

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

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

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

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

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

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

(C) Establishing a mailing address in this state.

(b) Physical presence does not include:

(i) Course offerings in the nature of a short course or seminar if instruction for the short course or seminar takes no more than twenty classroom hours;

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

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

(iv) Courses offered online or through the United States mail or

similar delivery service which do not require the physical meeting of a student with instructional staff;

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

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

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

(8) Postsecondary institution means any private postsecondary institution, out-of-state public postsecondary institution, or Nebraska public postsecondary institution exempt from the Private Postsecondary Career School Act; and

(9) Private postsecondary institution means any Nebraska or out-of-state nonpublic postsecondary institution with a physical presence in Nebraska, including any for-profit or nonprofit institution, that provides postsecondary education.

Sec. 4. The commission shall administer the Postsecondary Institution Act. To fulfill the purposes of the act, the commission may request from any department, division, board, bureau, commission, or other agency of this state, and such entity shall provide, such information as the commission deems necessary to exercise its powers and perform its duties under the act.

Sec. 5. The commission has the following powers and duties:

(1) To establish levels of authorization to operate based on institutional offerings;

(2) To receive, investigate as it may deem necessary, and act upon applications for authorization to operate and applications to renew an authorization to operate;

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

(4) To maintain a list of postsecondary institutions authorized to operate, which shall be made available to the public;

(5) To establish a notification process when an authorized postsecondary institution changes its address or adds instructional sites within this state;

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

(7) To establish fees for applications for authorization to operate and applications to renew authorization to operate, which shall be not more than the cost of reviewing and evaluating the applications;

(8) To investigate any violations of the act by a postsecondary institution; and

(9) To adopt and promulgate rules, regulations, and procedures to administer the act.

Sec. 6. The commission shall adopt and promulgate rules and regulations to establish minimum standards according to which a postsecondary institution shall be authorized to operate within the state, and upon failure to operate according to such standards, the postsecondary institution shall be subject to the suspension or revocation of the authorization to operate. An institution shall demonstrate that it can be maintained and operated in accordance with such standards. The standards shall include, but not be limited to:

(1) The financial soundness of the institution and its capability to fulfill its proposed commitments and sustain its operations;

(2) The quality and adequacy of teaching faculty, library services, and support services;

(3) The quality of the programs offered, including courses, programs of instruction, degrees, any necessary clinical placements, and the institution's ability to generate and sustain enrollment;

(4) The specific locations where programs will be offered or planned locations and a demonstration that facilities are adequate at the locations for the programs to be offered;

(5) Assurances regarding transfer of credits earned in the program to the main campus of such institution and clear and accurate representations about the transferability of credits to other institutions located in Nebraska and elsewhere;

(6) Whether such institution and, when appropriate, the program, are fully accredited, or seeking accreditation, by an accrediting body recognized by the United States Department of Education;

(7) The institution's policies and procedures related to students, including, but not limited to, recruiting and admissions practices;

(8) The tuition refund policy for an institution that does not participate in federal financial aid programs described in Title IV of the federal Higher Education Act of 1965, 20 U.S.C. 1001 et seq., as such act existed on January 1, 2011; and

(9) Any other standards deemed necessary by the commission.

Sec. 7. The following are exempt from the Postsecondary Institution Act:

(1) Any institution or organization which offers education or instruction and which is licensed and regulated solely by an agency of the federal government with respect to curriculum and qualifications of instructional staff; or

(2) Any private postsecondary career school as defined in the Private Postsecondary Career School Act.

Sec. 8. No postsecondary institution shall operate in the State of Nebraska by establishing a physical presence in this state until it has received authorization to operate by the commission.

Sec. 9. No postsecondary institution authorized to operate under the Postsecondary Institution Act shall charge tuition or fees for more than one academic term or require a student to sign loan documents for more than one academic year.

Sec. 10. (1) On the effective date of this act, the following institutions shall be deemed to have authorization to operate on a continuing basis:

(a) All out-of-state public postsecondary institutions with a physical presence that for at least twenty academic years have continuously offered one or more four-year undergraduate programs in Nebraska in compliance with state and federal law;

(b) All private postsecondary institutions with a physical presence that for at least twenty academic years, under the same ownership, have continuously offered one or more four-year undergraduate programs in Nebraska in compliance with state and federal law; and

(c) All Nebraska public postsecondary institutions.

(2) Nothing in this section shall provide any additional authority to the commission to regulate any institution deemed to have authorization to operate on a continuing basis.

Sec. 11. (1) Any postsecondary institution with a physical presence in Nebraska as of the effective date of this act and not previously authorized to operate by the commission or other state agency prior to the effective date of this act shall apply to the commission for authorization to operate as a new institution on or before December 31, 2011.

(2) Any postsecondary institution authorized to operate by the commission or other state agency prior to the effective date of this act and not deemed to have authority to operate on a continuing basis pursuant to section 10 of this act shall apply to the commission for a renewal of the authorization to operate between October 1, 2011, and December 31, 2011. If the institution fails to apply on or before December 31, 2011, the original authorization to operate shall terminate on January 1, 2012.

(3) Any postsecondary institution that has not established a physical presence as of the effective date of this act shall apply to the commission for authorization to operate as a new institution and receive such authorization prior to commencing operations in this state.

Sec. 12. (1) Except as otherwise provided in this section, after review of an initial application for authorization to operate, including any further information submitted by the applicant as required by the commission and any investigation of the applicant as the commission may deem necessary or appropriate, the commission shall grant or deny the application for initial authorization to operate. A grant of an initial authorization to operate may be on such terms and conditions as the commission may specify. Such authorization shall be for a five-year period unless the commission determines that a shorter period of time is appropriate based on the standards established pursuant to section 6 of this act.

(2) After review of an application to renew an authorization to operate, including any further information submitted by the applicant as required by the commission and any investigation of the applicant as the commission may deem necessary or appropriate, the commission shall grant or deny the application for renewal of an authorization to operate. Renewal of an authorization to operate may be on such terms and conditions as the commission

may specify. Such authorization shall be for a five-year period unless the commission determines that a shorter renewal period is appropriate based on the standards established pursuant to section 6 of this act. If the applicant has, for at least twenty academic years under the same ownership, continuously offered one or more four-year undergraduate programs with a physical presence in Nebraska in compliance with state and federal law, the commission shall grant authorization to operate on a continuing basis unless the commission determines that an additional review period is appropriate based on the standards established pursuant to section 6 of this act.

(3) Except as otherwise provided in this section, modifications, as defined by the commission in rules and regulations, to an existing authorization to operate, but not to an authorization to operate on a continuing basis, shall require an application to the commission. After review of the application, including any further information submitted by the applicant as required by the commission and any investigation of the applicant as the commission may deem necessary or appropriate, the commission shall grant or deny the application. Approval of the application may be on such terms and conditions as the commission may specify. Such authorization shall replace the existing authorization to operate and shall be for a five-year period unless the commission determines that a shorter period of time is appropriate based on the standards established pursuant to section 6 of this act.

(4) If an application for an initial authorization to operate or a modification to an existing authorization to operate includes a request to establish a new campus in this state, as defined by the commission in rules and regulations, the commission shall hold a public hearing. The hearing shall be scheduled following a completed review of the application for authorization to operate or the modification of an authorization to operate, including any further information submitted by the applicant as required by the commission and any investigation of the applicant as the commission may deem necessary or appropriate, and shall be conducted according to the Administrative Procedure Act. After the public hearing, the commission shall grant or deny the application. A grant of authorization to operate or the modification of an authorization to operate may be on such terms and conditions as the commission may specify. Such authorization or modification shall be for a five-year period unless the commission determines that a shorter period of time is appropriate based on the standards established pursuant to section 6 of this act.

Sec. 13. An authorization to operate shall be in a form approved by the commission and shall state in a clear and conspicuous manner at least the following information:

(1) The date of issuance, effective date, and term of the authorization to operate;

(2) The full and correct name and address of the institution authorized to operate;

(3) The authority for authorization to operate and the conditions thereof; and

(4) Any limitation of authorization to operate as deemed necessary by the commission.

Sec. 14. Any postsecondary institution authorized to operate which ceases to meet any of the requirements of the Postsecondary Institution Act, any rules or regulations adopted and promulgated under the act, or any terms or conditions specified by the commission for authorization to operate under the act shall be notified in writing of any such specific deficiency by certified mail. A hearing shall be scheduled requiring the institution to show cause why the authorization to operate should not be suspended or revoked. The hearing shall be held according to the Administrative Procedure Act. After the hearing, if the commission determines that any requirements, rules or regulations, or terms and conditions have been violated, the commission may suspend or revoke the authorization to operate or may require action as a condition of continued authorization to operate.

Sec. 15. The authorization to operate or authorization to operate on a continuing basis shall be issued to the owner or governing body of the postsecondary institution and shall be nontransferable. If there is a change in ownership, as defined by the commission in rules and regulations, the new owner or governing body shall, within thirty days after the change of ownership, apply for a new authorization to operate under the Postsecondary Institution Act, and if the institution fails to apply within such time period, the original authorization to operate shall terminate. An application for a new authorization to operate may be deemed an application for renewal of the institution's original authorization to operate. Verification that all student records are transferred intact and in good condition to the new owner

shall accompany the application.

Sec. 16. At least ninety days prior to the expiration of its authorization to operate, a postsecondary institution shall complete and file with the commission an application form for renewal of its authorization to operate. Financial stability information shall accompany the application.

Sec. 17. (1) Any institution denied an authorization to operate, a renewal of an authorization to operate, or an authorization to operate on a continuing basis by the commission shall have the right to a hearing and a review of such decision by the commission. If upon written notification of a denial the aggrieved party desires a hearing and review, such party shall notify the commission in writing within ten business days after receipt of notice by the commission. If the aggrieved party does not notify the commission pursuant to this section, the action shall be deemed final. Upon receipt of such notice from the aggrieved party, the commission shall fix the time and place for a hearing and shall notify the aggrieved party of such by certified mail. The hearing shall be conducted according to the Administrative Procedure Act.

(2) A decision of the commission following such hearing shall be deemed final subject to the right of judicial review provided in the Administrative Procedure Act. All matters presented at any such hearing shall be acted upon promptly by the commission, and the commission shall notify all parties in writing of its decision, which shall include a statement of findings and conclusions upon all material issues of fact, law, or discretion presented at the hearing and the appropriate rule, regulation, order, sanction, relief, or denial thereof.

Sec. 18. (1) Any person claiming damage or loss as a result of any act or practice by a postsecondary institution which is a violation of the Postsecondary Institution Act, of the rules and regulations adopted and promulgated under the act, or of standards established pursuant to section 6 of this act may file with the commission a complaint against such institution. The complaint shall set forth the alleged violation and shall contain such other information as may be required by the commission. A complaint may also be filed with the commission by the executive director or the Attorney General.

(2) If efforts by the commission to resolve the complaint are not successful and if the commission deems it appropriate, the commission may hold a hearing on such complaint after ten days' written notice by certified mail, return receipt requested, to such institution, giving notice of a time and place for the hearing on such complaint. Such hearing shall be conducted in accordance with the Administrative Procedure Act. If, upon all evidence at the hearing, the commission finds that a postsecondary institution has engaged in or is engaging in any act or practice which violates the Postsecondary Institution Act, the rules and regulations adopted and promulgated under the act, or the standards established pursuant to section 6 of this act, the commission shall issue and cause to be served upon such institution an order requiring such institution to cease and desist from such act or practice. The commission may also, as appropriate, based on its own investigation or the evidence adduced at such hearing or both, commence an action:

(a) To revoke an institution's authorization to operate if the institution does not have an authorization to operate on a continuing basis; or

(b) To refer the complaint and all related evidence to the Attorney General.

Sec. 19. Any person aggrieved or adversely affected by any final commission action may appeal such action. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 20. The Attorney General or the county attorney of the county in which a postsecondary institution is located, at the request of the commission or on his or her own accord, may bring any appropriate action or proceeding in any court of competent jurisdiction to enforce the Postsecondary Institution Act.

Sec. 21. If it appears to the commission that any entity is or has been violating the Postsecondary Institution Act or any of the rules, regulations, or orders of the commission, the commission may file a petition for injunction in the name of the commission in any court of competent jurisdiction in this state against such entity for the purpose of enjoining such violation or for an order directing compliance with the act and any rules, regulations, and orders. The commission shall not be required to allege or prove that there is no adequate remedy at law. The right of injunction provided in this section shall be in addition to any other legal remedy which the commission may possess and shall be in addition to any right of criminal prosecution provided by law. The commission shall not obtain a temporary

restraining order without notice to the entity affected. The pendency of commission action with respect to alleged violations shall not operate as a bar to an action for injunctive relief pursuant to this section.

Sec. 22. Section 9-812, Revised Statutes Cumulative Supplement, 2010, as amended by section 1, Legislative Bill 333, One Hundred Second Legislature, First Session, 2011, is amended to read:

9-812 (1) All money received from the operation of lottery games conducted pursuant to the State Lottery Act in Nebraska shall be credited to the State Lottery Operation Trust Fund, which fund is hereby created. All payments of the costs of establishing and maintaining the lottery games shall be made from the State Lottery Operation Cash Fund. In accordance with legislative appropriations, money for payments for expenses of the division shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Operation Cash Fund, which fund is hereby created. All money necessary for the payment of lottery prizes shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Prize Trust Fund, which fund is hereby created. The amount used for the payment of lottery prizes shall not be less than forty percent of the dollar amount of the lottery tickets which have been sold.

(2) Beginning October 1, 2003, a portion of the dollar amount of the lottery tickets which have been sold on an annualized basis shall be transferred from the State Lottery Operation Trust Fund to the Education Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund. The dollar amount transferred pursuant to this subsection shall equal the greater of (a) the dollar amount transferred to the funds in fiscal year 2002-03 or (b) any amount which constitutes at least twenty-two percent and no more than twenty-five percent of the dollar amount of the lottery tickets which have been sold on an annualized basis. To the extent that funds are available, the Tax Commissioner and director may authorize a transfer exceeding twenty-five percent of the dollar amount of the lottery tickets sold on an annualized basis.

(3) Of the money available to be transferred to the Education Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund:

(a) The first five hundred thousand dollars shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 71-817;

(b) Nineteen and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Education Innovation Fund;

(c) Twenty-four and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Opportunity Grant Fund;

(d) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act;

(e) Ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska State Fair Board if the most populous city within the county in which the fair is located provides matching funds equivalent to ten percent of the funds available for transfer. Such matching funds may be obtained from the city and any other private or public entity, except that no portion of such matching funds shall be provided by the state. If the Nebraska State Fair ceases operations, ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the General Fund; and

(f) One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 71-817.

(4) (a) The Education Innovation Fund is created. At least seventy-five percent of the lottery proceeds allocated to the Education Innovation Fund shall be available for disbursement.

(b) For fiscal year 2010-11, the Education Innovation Fund shall be allocated as follows: The first one million dollars shall be transferred to

the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act, and the amount remaining in the Education Innovation Fund shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(c) For fiscal year 2011-12, the Education Innovation Fund shall be allocated as follows: (i) The first two hundred twenty-five thousand dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Attracting Excellence to Teaching Program; (ii) the next three million three hundred sixty-five thousand nine hundred sixty-two dollars shall be distributed to school districts as grants pursuant to the Early Childhood Education Grant Program; (iii) the next two million one hundred seventy-five thousand six hundred seventy-three dollars shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02; (iv) the next four hundred ninety-one thousand five hundred forty-one dollars shall be used by the State Department of Education for the development of an integrated early childhood, elementary, secondary, and postsecondary student information system; (v) the next four hundred fifty thousand dollars shall fund the Center for Student Leadership and Extended Learning Act; (vi) the next one hundred fourteen thousand six hundred twenty-nine dollars shall fund the multicultural education program created under section 79-720; (vii) the next one hundred twenty-three thousand four hundred sixty-eight dollars shall be used by the department to employ persons to investigate and prosecute alleged violations as provided in section 79-868; and (viii) up to the next one hundred sixty thousand dollars shall be used by the department to implement section 26 of this act; and (ix) the amount remaining shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(d) For fiscal year 2012-13, the Education Innovation Fund shall be allocated as follows: (i) The first forty-five thousand dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Attracting Excellence to Teaching Program; (ii) the next three million three hundred sixty-five thousand nine hundred sixty-two dollars shall be distributed to school districts as grants pursuant to the Early Childhood Education Grant Program; (iii) the next two million one hundred seventy-five thousand six hundred seventy-three dollars shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02; (iv) the next one hundred eight thousand one hundred thirty-six dollars shall be used by the department for the development of an integrated early childhood, elementary, secondary, and postsecondary student information system; (v) the next four hundred fifty thousand dollars shall fund the Center for Student Leadership and Extended Learning Act; (vi) the next one hundred fourteen thousand six hundred twenty-nine dollars shall be used by the department to fund the multicultural education program created under section 79-720; (vii) the next one hundred twenty-three thousand four hundred sixty-eight dollars shall be used by the department to employ persons to investigate and prosecute alleged violations as provided in section 79-868; and (viii) up to the next one hundred sixty thousand dollars shall be used by the department to implement section 26 of this act; and (ix) the amount remaining shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(e) For fiscal ~~years year~~ year 2013-14, ~~through 2015-16,~~ the Education Innovation Fund shall be allocated as follows: (i) The first one million dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act; (ii) the next allocation shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02 in an aggregated amount up to the amount distributed in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (iii) the next allocation shall be used by the State Department of Education for the integrated early childhood, elementary, secondary, and postsecondary student information system in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (iv) the next allocation shall fund the Center for Student Leadership and Extended Learning Act in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (v) the next allocation shall be used by the department to fund the multicultural education program created under section 79-720 in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic

allowable growth rate pursuant to section 79-1025; (vi) the next allocation shall be used by the department to employ persons to investigate and prosecute alleged violations as provided in section 79-868 in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; ~~and (vii) up to the next one hundred sixty thousand dollars shall be used by the department to implement section 26 of this act;~~ and (viii) the amount remaining shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(f) For fiscal years 2014-15 and 2015-16, the Education Innovation Fund shall be allocated as follows: (i) The first one million dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act; (ii) the next allocation shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02 in an aggregated amount up to the amount distributed in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (iii) the next allocation shall be used by the State Department of Education for the integrated early childhood, elementary, secondary, and postsecondary student information system in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (iv) the next allocation shall fund the Center for Student Leadership and Extended Learning Act in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (v) the next allocation shall be used by the department to fund the multicultural education program created under section 79-720 in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (vi) the next allocation shall be used by the department to employ persons to investigate and prosecute alleged violations as provided in section 79-868 in an aggregated amount up to the amount used in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; and (vii) the amount remaining shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

~~(f)~~ (g) For fiscal year 2016-17 and each fiscal year thereafter, the Education Innovation Fund shall be allocated, after administrative expenses, for education purposes as provided by the Legislature.

(5) Any money in the State Lottery Operation Trust Fund, the State Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, or the Education Innovation Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(6) Unclaimed prize money on a winning lottery ticket shall be retained for a period of time prescribed by rules and regulations. If no claim is made within such period, the prize money shall be used at the discretion of the Tax Commissioner for any of the purposes prescribed in this section.

Sec. 23. Section 38-2622, Reissue Revised Statutes of Nebraska, as amended by section 4, Legislative Bill 334, One Hundred Second Legislature, First Session, 2011, is amended to read:

38-2622 Annual financial payments made under sections 38-2620 to 38-2623 shall be limited to students who participated in or were accepted into the program in the academic year 2010-11 and shall continue for the remaining academic year or years that any such student is enrolled in an accredited school or college of optometry subject to the limitation provided in section 38-2623.

Sec. 24. Section 77-2704.12, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.12 (1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by (a) any nonprofit organization created exclusively for religious purposes, (b) any nonprofit organization providing services exclusively to the blind, (c) any nonprofit private educational institution established under sections 79-1601 to 79-1607, (d) ~~any nonprofit private college or university established under sections 85-1101 to 85-1111,~~ regionally or nationally accredited, nonprofit, privately controlled college or university with its primary campus physically located in Nebraska, (e) any nonprofit (i) hospital, (ii) health clinic when two or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives federal funds through the United States Public Health Service

for the purpose of serving populations that are medically underserved, (iii) skilled nursing facility, (iv) intermediate care facility, (v) assisted-living facility, (vi) intermediate care facility for the mentally retarded, (vii) nursing facility, (viii) home health agency, (ix) hospice or hospice service, or (x) respite care service licensed under the Health Care Facility Licensure Act, (f) any nonprofit licensed child-caring agency, (g) any nonprofit licensed child placement agency, or (h) any nonprofit organization certified by the Department of Health and Human Services to provide community-based services for persons with developmental disabilities.

(2) Any organization listed in subsection (1) of this section shall apply for an exemption on forms provided by the Tax Commissioner. The application shall be approved and a numbered certificate of exemption received by the applicant organization in order to be exempt from the sales and use tax.

(3) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of building materials which are physically annexed to the structure and which subsequently belong to the owner of the organization or institution. The appointment of purchasing agents shall be in writing and occur prior to having any building materials annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for a licensed not-for-profit institution.

(4) Any organization listed in subsection (1) of this section which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to the building materials being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the building materials physically annexed to real estate in the construction, improvement, or repair.

(5) Any person purchasing, storing, using, or otherwise consuming building materials in the performance of any construction, improvement, or repair by or for any institution enumerated in subsection (1) of this section which is licensed upon completion although not licensed at the time of construction or improvement, which building materials are annexed to real estate and which subsequently belong to the owner of the institution, shall pay any applicable sales or use tax thereon. Upon becoming licensed and receiving a numbered certificate of exemption, the institution organized not for profit shall be entitled to a refund of the amount of taxes so paid in the performance of such construction, improvement, or repair and shall submit whatever evidence is required by the Tax Commissioner sufficient to establish the total sales and use tax paid upon the building materials physically annexed to real estate in the construction, improvement, or repair.

Sec. 25. Section 79-757, Reissue Revised Statutes of Nebraska, is amended to read:

79-757 Sections 79-757 to 79-762 and section 26 of this act shall be known and may be cited as the Quality Education Accountability Act.

Sec. 26. Beginning with the 2011-12 school year, the State Department of Education may implement a three-year pilot project for the districtwide administration of a standard college admission test, selected by the State Board of Education, to students in the eleventh grade attending a public school in a participating school district to determine if such test (1) would improve the college-going rate and career readiness of Nebraska students and (2) could be utilized as the assessment for the one grade in high school as required under section 79-760.03. Participation by school districts in the pilot project shall be voluntary and shall be subject to the approval of the board. On or before September 1, 2012, and on or before September 1 each year thereafter through 2014, the department shall report to the Governor, the Clerk of the Legislature, and the chairperson of the Education Committee of the Legislature on the pilot project. The project shall be paid for with funds from the Education Innovation Fund as provided in section 9-812.

Sec. 27. Section 85-943, Reissue Revised Statutes of Nebraska, is amended to read:

85-943 The University of Nebraska may continue to offer the associate degree, diploma, and ~~eertificate-in-course~~ certificate in agriculturally related fields, radiologic technology, radiation therapy, nuclear medicine technology, and engineering technology if approved by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414 upon the demonstration of a compelling need and unique

capacity by the university to offer such programs. The University of Nebraska shall not offer associate degrees or less than associate-degree-level diplomas or ~~certificates-in-course~~ certificates in other than authorized and approved programs. If approved by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414, the University of Nebraska may offer certificates within fields in addition to those specified in this section if the preponderance of courses comprising those certificates are above the associate-degree level.

Sec. 28. Section 85-961, Reissue Revised Statutes of Nebraska, is amended to read:

85-961 The community colleges shall have, except in specified program areas authorized by statute and the Coordinating Commission for Postsecondary Education, sole responsibility for the award of associate degrees, diplomas, and ~~certificates in less than baccalaureate degree program areas~~ certificates comprised of courses at the associate-degree level or below and approved by the commission pursuant to sections 85-1413 and 85-1414.

Sec. 29. Section 85-1412, Revised Statutes Cumulative Supplement, 2010, is amended to read:

85-1412 The commission shall have the following additional powers and duties:

(1) Conduct surveys and studies as may be necessary to undertake the coordination function of the commission pursuant to section 85-1403 and request information from governing boards and appropriate administrators of public institutions and other governmental agencies for research projects. All public institutions and governmental agencies receiving state funds shall comply with reasonable requests for information under this subdivision. Public institutions may comply with such requests pursuant to section 85-1417;

(2) Recommend to the Legislature and the Governor legislation it deems necessary or appropriate to improve postsecondary education in Nebraska and any other legislation it deems appropriate to change the role and mission provisions in sections 85-917 to 85-966.01;

(3) Establish any advisory committees as may be necessary to undertake the coordination function of the commission pursuant to section 85-1403 or to solicit input from affected parties such as students, faculty, governing boards, administrators of the public institutions, administrators of the private nonprofit institutions of postsecondary education and proprietary institutions in the state, and community and business leaders regarding the coordination function of the commission;

(4) Participate in or designate an employee or employees to participate in any committee which may be created to prepare a coordinated plan for the delivery of educational programs and services in Nebraska through the telecommunications system;

(5) Seek a close liaison with the State Board of Education and the State Department of Education in recognition of the need for close coordination of activities between elementary and secondary education and postsecondary education;

(6) Administer the Integrated Postsecondary Education Data System or other information system or systems to provide the commission with timely, comprehensive, and meaningful information pertinent to the exercise of its duties. The information system shall be designed to provide comparable data on each public institution. The commission shall also administer the uniform information system prescribed in sections 85-1421 to 85-1427 known as the Nebraska Educational Data System. Public institutions shall supply the appropriate data for the information system or systems required by the commission;

(7) Administer the Access College Early Scholarship Program Act, and the Nebraska Opportunity Grant Act, and the Postsecondary Institution Act;

(8) Accept and administer loans, grants, and programs from the federal or state government and from other sources, public and private, for carrying out any of its functions, including the administration of privately endowed scholarship programs. Such loans and grants shall not be expended for any other purposes than those for which the loans and grants were provided. The commission shall determine eligibility for such loans, grants, and programs, and such loans and grants shall not be expended unless approved by the Governor;

~~(9) Consistent with section 85-1620, approve, in a timely manner, new baccalaureate degree programs to be offered at private postsecondary career schools as defined in section 85-1603. The commission may charge a reasonable fee based on its administrative costs for authorizations pursuant to this subdivision and section 85-1620. The commission shall report such action to the Commissioner of Education;~~

~~(10) Pursuant to sections 85-1101 to 85-1104, authorize out-of-state~~

institutions of higher or postsecondary education to offer courses or degree programs in this state;

~~(11) Pursuant to sections 85-1105 to 85-1111, approve or disapprove petitions to establish new private colleges in this state;~~

~~(12) (9) On or before December 1, 2000, and on or before December 1 every two years thereafter, of each even-numbered year, submit to the Legislature and the Governor a report of its objectives and activities and any new private colleges in Nebraska and the implementation of any recommendations of the commission for the preceding two calendar years;~~

~~(13) (10) Provide staff support for interstate compacts on postsecondary education;~~

~~(14) (11) Request inclusion of the commission in any existing grant review process and information system; and~~

(12) In collaboration with the State Department of Education, public and private postsecondary educational institutions, private, denominational, or parochial secondary schools, educational service units, and school districts, conduct a study regarding the need for uniform policies and practices for dual-enrollment courses and career academies in Nebraska, including transferability of dual-enrollment courses and consistency of administration of career academies. The study shall also include a review of any program that provides Nebraska high school students with the opportunity to earn college credit or advanced placement through participation in courses and examinations administered by a not-for-profit organization and of the need for uniform policies and practices related to the acceptance and transferability of such courses and the college credit or advanced placement earned as a result of a student's performance on such examinations. The commission shall report the findings of such study and its recommendations, including recommendations for possible legislation, to the Legislature on or before December 15, 2011. For purposes of this subdivision, dual-enrollment course has the same definition as provided in section 79-1201.01.

~~(15) Facilitate a study that explores the following issues related to the Nebraska community college system:~~

~~(a) The need for changes to the statutory role and mission of Nebraska community colleges;~~

~~(b) Changes in the weighting of courses that may be necessary for reimbursable educational units to properly reflect the role and mission of Nebraska community colleges and the cost of providing such courses;~~

~~(c) Powers, duties, and mission of the Nebraska Community College Association or its successor and whether membership in such an association should be required;~~

~~(d) Consequences for failing to satisfy current community college association membership requirements contained in section 85-1502; and~~

~~(e) State coordination of community colleges in the absence of a community college association or membership therein.~~

~~The commission shall include and facilitate discussion among the state's community colleges in the completion of such study. Each community college shall participate in good faith with the conduct of such study. The commission shall report its findings to the Legislature on or before December 15, 2009.~~

Sec. 30. Section 85-1604, Reissue Revised Statutes of Nebraska, is amended to read:

85-1604 The following education and schools are exempted from the Private Postsecondary Career School Act:

(1) Schools exclusively offering instruction at any or all levels from preschool through the twelfth grade;

(2) Education sponsored by a bona fide trade, business, professional, or fraternal organization which is offered solely for that organization's membership or offered without charge;

(3) Education provided by or funded by an employer and offered solely to its employees for the purpose of improving such persons in such employment;

(4) Education solely avocational or recreational in nature as determined by the department;

(5) Educational programs offered by a charitable institution, organization, or agency as long as such education or training is not advertised or promoted as leading toward occupational objectives;

(6) Public postsecondary schools established, operated, and governed by this state or its political subdivisions;

(7) Except as provided in subdivision (9) of this section, schools Schools or organizations offering education or instruction that is not part of a degree program leading to an associate, a baccalaureate, a graduate, or a professional degree which are licensed and regulated by agencies of this state

other than the department, as of September 27, 1977, except that such schools or organizations shall not be exempt from the act with respect to agents' permits and the Tuition Recovery Cash Fund;

(8) Schools or organizations which offer education or instruction and which are licensed and regulated solely by an agency of the federal government with respect to curriculum and qualifications of instructional staff;

~~(9) Not-for-profit private colleges, universities, and entities (a) which awarded baccalaureate or higher degrees prior to May 27, 2003, which maintain and operate educational programs for which credit is given, and which are in compliance with sections 85-1105 to 85-1111 or (b) which award baccalaureate or higher degrees, which maintain and operate educational programs for which credit is given, which are in compliance with sections 85-1105 to 85-1111, and which are regionally accredited;~~

~~(10) For-profit colleges, universities, and entities which award baccalaureate or higher degrees, which are in compliance with sections 85-1105 to 85-1111, and which are regionally accredited;~~

~~(11) Institutions which have previously been regulated as private postsecondary career schools pursuant to the Private Postsecondary Career School Act, which have become regionally accredited, and which have been approved by the commission to offer baccalaureate degrees or higher pursuant to sections 85-1105 to 85-1111. Institutions which have previously been regulated as private postsecondary career schools and which have been approved by the commission to offer baccalaureate degrees pursuant to sections 85-1105 to 85-1111 but which have not become regionally accredited shall remain under the jurisdiction of the State Department of Education and subject to the Private Postsecondary Career School Act; and~~

(9) Any postsecondary institution offering or proposing to offer courses or programs leading to a baccalaureate, graduate, or professional degree, but whose offerings may include associate degree programs, diplomas, and other certificates based on the award of college credit, including any such institutions that were regulated prior to the effective date of this act as private postsecondary career schools pursuant to the Private Postsecondary Career School Act; and

~~(12) (10) Entities exclusively offering short-term training.~~

Sec. 31. Section 85-1620, Reissue Revised Statutes of Nebraska, is amended to read:

85-1620 ~~(1)~~ A school which has been accredited pursuant to section 85-1619 may apply to the department for authority to award associate degrees. Upon determining that the quality of the courses of instruction at the applicant school meets the standards established in the department's rules and regulations, the commissioner may grant the applicant the authority to award an associate degree and shall issue a certificate setting forth the programs for which the associate degree may be awarded. Such authorization shall continue so long as the school remains accredited.

~~(2) A school which has been accredited pursuant to section 85-1619 may apply to the department for authority to award baccalaureate degrees. The department shall refer such degree applications to the commission for its review and approval. Within ninety days after receipt of such referral, the commission shall make a determination setting forth the specific program area and the name of the baccalaureate degree program. The commission shall report its determination to the commissioner who shall issue a certificate setting forth the programs for which the baccalaureate degree may be awarded. Such authorization shall continue so long as the school remains accredited.~~

Sec. 32. Section 85-1643, Reissue Revised Statutes of Nebraska, is amended to read:

85-1643 (1) The Private Postsecondary Career Schools Cash Fund is created. All fees collected pursuant to the Private Postsecondary Career School Act shall be remitted to the State Treasurer for credit to the fund. The fund shall be used only for the purpose of administering the act. No fees shall be subject to refund.

(2) Except as provided in subsection (4) of this section, fees collected pursuant to the act shall be the following:

(a) Initial application for authorization to operate, two hundred dollars plus twenty dollars per program of study offered;

(b) Renewal application for authorization to operate, one hundred dollars plus twenty dollars per program of study offered, except that the board may establish a variable fee schedule based upon the prior school year's gross tuition revenue as provided by the school pursuant to section 85-1656;

(c) Approval to operate a branch facility, one hundred dollars;

(d) Late submission of application, fifty dollars;

(e) Initial agent's permit, fifty dollars;

(f) Agent's permit renewal, twenty dollars;
 (g) Accreditation or reaccreditation, one hundred dollars;
 (h) Initial authorization to award an associate degree, one hundred dollars;

~~(i) Initial authorization to offer a baccalaureate degree, two hundred dollars;~~

~~(j) (i) Significant program change, fifty dollars;~~

~~(k) (j) Change of name or location, twenty-five dollars; and~~

~~(l) (k) Additional new program, one hundred dollars.~~

(3) Fees for out-of-state schools may include, but shall not exceed the following:

(a) Certificate of approval to recruit, five hundred dollars annually;

(b) Initial agent's permit, one hundred dollars; and

(c) Agent's permit renewal, forty dollars.

(4) (a) The board shall consult with the advisory council established pursuant to section 85-1607 regarding any increase in fees under the act. ~~The board may increase fees by not more than twenty percent for each year of fiscal years 2003-04, 2004-05, and 2005-06.~~ Beginning with fiscal year 2006-07 and each year thereafter, the board in consultation with the advisory council shall establish fees sufficient to cover the total cost of administration, except that such fees shall not exceed one hundred ten percent of the previous year's total cost. Such fees shall be set out in the rules and regulations adopted and promulgated by the board.

(b) Total cost of administration shall be determined by an annual audit of:

(i) Salaries and benefits or portions thereof for those department employees who administer the act;

(ii) Operating costs such as rent, utilities, and supplies;

(iii) Capital costs such as office equipment, computer hardware, and computer software;

(iv) Costs for travel by employees of the department, including car rental, gas, and mileage charges; and

(v) Other reasonable and necessary costs as determined by the board.

Sec. 33. Section 85-2105, Revised Statutes Cumulative Supplement, 2010, is amended to read:

85-2105 (1) An applicant for the Access College Early Scholarship Program shall complete an application form developed and provided by the commission and shall forward the form to his or her guidance counselor. Such application shall include, but not be limited to, the applicant's high school, social security number, date of birth, grade point average, grade level, qualified postsecondary educational institution, and information necessary to determine the student's eligibility. The guidance counselor shall verify the student's eligibility under the Access College Early Scholarship Program Act and shall forward the ~~information~~ application to the commission for review within fifteen days following receipt of the form from the student. Notification of tuition and mandatory fees to be accrued by the student shall be provided to the commission by the student, high school, or qualified postsecondary educational institution as determined by the commission.

(2) The commission shall review the application and verify the student's eligibility under the act. The commission shall notify the student and the student's guidance counselor of the verification of eligibility and the estimated award amount in writing within thirty days following receipt of the form from the student's guidance counselor. The scholarship award shall equal the lesser of tuition and mandatory fees accrued by the student after any discounts applicable to such student from the qualified postsecondary educational institution or the tuition and mandatory fees that would have been accrued by the student for the same number of credit hours if the student were taking the course as a full-time, resident, undergraduate student from the University of Nebraska-Lincoln. The commission shall forward such amount directly to the qualified postsecondary educational institution as payment of such student's tuition and mandatory fees.

(3) The commission shall make such payments in the order the applications are received, except that the commission may limit the number of scholarships awarded in each term.

(4) The commission may limit the number of scholarships a student may receive.

(5) For any student receiving a scholarship pursuant to the act for tuition and mandatory fees, the qualified postsecondary educational institution receiving the payment shall report either the student's grade for the course or the student's failure to complete the course to the commission within thirty days after the end of the course or within one hundred eighty

days after receipt of a payment pursuant to the act if the course for which the scholarship was awarded does not have a specified ending date. The commission shall keep the identity of students receiving scholarships confidential, except as necessary to comply with the requirements of the act.

Sec. 34. Original sections 77-2704.12, 79-757, 85-943, 85-961, 85-1604, 85-1620, and 85-1643, Reissue Revised Statutes of Nebraska, sections 85-1412 and 85-2105, Revised Statutes Cumulative Supplement, 2010, section 38-2622, Reissue Revised Statutes of Nebraska, as amended by section 4, Legislative Bill 334, One Hundred Second Legislature, First Session, 2011, and section 9-812, Revised Statutes Cumulative Supplement, 2010, as amended by section 1, Legislative Bill 333, One Hundred Second Legislature, First Session, 2011, are repealed.

Sec. 35. The following sections are outright repealed: Sections 85-1101, 85-1102, 85-1103, 85-1103.01, 85-1103.02, 85-1104, 85-1105, 85-1106, 85-1107, 85-1108, 85-1109, 85-1110, 85-1110.01, and 85-1111, Reissue Revised Statutes of Nebraska.

Sec. 36. Since an emergency exists, this act takes effect when passed and approved according to law.