

SESSION OF 2004

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2795**

As Amended by Senate Committee of the Whole

**Brief\***

**Compulsory School Attendance**

HB 2795 would amend the state's compulsory school attendance law to provide that children who are 16 or 17 years of age and enrolled concurrently in a high school and in a Regents' university, community college, technical college, vocational education school, or Washburn University would be exempt from those attendance requirements. The exemption would apply retroactively to persons who met those concurrent enrollment requirements from and after July 1, 1997, when the maximum compulsory school attendance age was increased from 16 to 18. The bill would also define a regularly enrolled student as one who is in attendance at least five hours per day.

**Private and Out-of-State Postsecondary Institutions Act**

HB 2795 would also enact the "Kansas Private and Out-of-State Postsecondary Institutions Act" by consolidating existing statutory provisions governing proprietary schools and private postsecondary institutions and extending provisions that currently apply only to proprietary schools to certain private and out-of-state institutions. As under existing law, the Kansas Board of Regents would be responsible for administering statutory requirements for these institutions. The bill also would enact new enforcement provisions as applied to out-of-state and private schools and create new categories of fees that would be charged for issuance of certain certificates required under the Act.

Entities to which the bill would apply include:

- ! Any postsecondary schools conducting business in Kansas that are organized under the law of a jurisdiction outside Kansas.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- ! Private postsecondary institutions that are profit making, or non-profit schools with a physical presence in Kansas or which solicit business in Kansas. For purposes of this bill, private institutions include entities that offer courses through classroom contact or via correspondence, audio, video, or computer technology.

Both categories are referred to as "institutions." Entities that would be exempt from the act are those currently exempt from statutory requirements for registration with or certification by the Board of Regents.

An institution would have a "physical presence" in Kansas if it employs in the state a Kansas resident to conduct activities on its behalf. An institution would also have a physical presence in Kansas if it delivers, or plans to deliver, instruction in Kansas and receives assistance delivering that instruction from another organization in the state. Assisting organizations specifically enumerated in the Act include, but would not be limited to, cable television companies and television broadcast stations that carry instruction sponsored by the institution.

The bill would prohibit anyone from:

- ! operating an institution without a certificate of approval from the Board of Regents;
- ! soliciting prospective students without being registered under the Act;
- ! accepting contracts or enrollment applications from a representative who is not registered;
- ! using fraud or misrepresentation in advertising or in procuring enrollment of a student;
- ! using the term "accredited" except as defined by the Act; and
- ! using the term "university" in the name or advertisement of the institution unless the institution meets the definition of that term in the Act.

The bill would enact certain policy changes:

- ! In general, provisions of current law governing proprietary schools would be extended to private and out-of-state institutions.

- ! With the exception of setting fees, the Board of Regents would be authorized, but not required to adopt rules and regulations to implement the Act. Under existing law, the Board is required to establish implementing rules and regulations.
- ! Standards for determining institutions that qualify for approval to confer or award degrees would no longer be established in rules and regulations. The existing requirement that any such standards be consistent with those applicable to state educational institutions would be included in the new Act.
- ! The composition of the Advisory Commission on Private and Out-of-State Postsecondary Institutions would differ from the existing advisory commission by inclusion of at least one representative of a degree granting institution. In addition, categories from among which four of the commission’s nine members must be selected would include the employment community and economic development. Agriculture and organized labor would no longer be included among those categories.
- ! The Advisory Commission would no longer be required, but would continue to be authorized, to make recommendations to the Board of Regents regarding administration of the Act.
- ! The bill would specifically prohibit use of the term “accredited” unless an institution is accredited by an agency recognized by the U.S. Department of Education. Use of the term “university” also would be prohibited unless the entity describing itself as such is an institution of postsecondary education authorized by the Board of Regents to offer bachelor degrees and graduate or first professional degrees.

The bill would establish new maximum fees for certification of degree granting institutions. The Board of Regents would be required to set fees in rules and regulations subject to those maximums. The new fees would be:

For Kansas-based institutions:	
Initial issuance of certificate of approval	\$2,000
Renewal of certificate of approval	\$1,600
For out-of-state institutions:	

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Initial issuance of certificate of approval	\$3,800
Renewal of certificate of approval	\$2,800

The new maximum fee for initial issuance of a certificate of approval for a degree granting institution is \$300 higher than the existing initial certification fee for a non-degree granting institution. The other new maximum fees are \$400 higher than the counterpart fees for non-degree granting institutions. Finally, the bill would authorize the Board to charge an unspecified fee for conduct of onsite reviews for degree granting institutions or to review curriculum in content areas in which the Board does not have expertise.

A violation of the Act would be a class C nonperson misdemeanor. Under existing law that is the penalty for violation of the proprietary school statutes, but the existing out-of-state and private school laws do not include a similar penalty. The remedy available to the Board under the existing out-of-state and private school laws – requesting that the Attorney General seek an injunction or order directing compliance with the Act – also would be expanded to cover proprietary. Thus, either the Attorney General or a County or District Attorney could apply for an injunction to prevent or stop a violation of the Act. If a court finds that a person willfully used a deceptive or misleading act or practice, the Attorney General or a County or District Attorney could petition the court to impose a maximum \$1,000 civil penalty for each violation of the Act.

The provision in the existing proprietary school law regarding notes and contracts would be extended also to out-of-state and private schools. In accordance with that provision, if an institution is not in compliance with the Act, contracts taken by the institution or its officers, directors, agents or representatives would be null and void. Any person who entered into a contract with such an institution, its officers, institution or its officers, directors, agents or representatives would be entitled to full refund of any money or consideration paid, plus interest, and damages.

**Tuition Waiver for Foster Care Children**

HB 2795 would amend provisions dealing with the tuition waiver for children in the foster care system. The bill would increase the number of new tuition waivers provided by an educational institution from three per year to five. In addition, Washburn University would be

added to the list of participating educational institutions.

Current eligibility requirements require that the participant must have been in the foster care system on his or her 18th birthday and have graduated from high school or attained a general education development (GED) certificate while in foster care. Eligibility requirements for participation would be expanded to include:

- ! an individual who left the foster care system prior to his or her 18th birthday and graduated from high school or attained a GED certificate while in foster care; and
- ! an individual who was adopted out of the foster care system on or after the individual's 16th birthday.

A student would be eligible for the tuition waiver until the semester he or she turns 21 years old. Current law sets no such limit.

The bill would require that refunds when an eligible student discontinues attendance be returned to the original source of funding. If the original source is federal funding transferred from the Department of Social and Rehabilitation Services, the funding will be returned to the Department of Social and Rehabilitation Services. Refunds are currently credited to a tuition waiver reimbursement fund within the Board of Regents.

HB 2795 would require that the Board of Regents certify that 20 percent of the total amount required to pay the claims received from the educational institutions be in cash, in-kind contributions, State General Fund moneys, or non-federal funds not used to match other funds.

Annual expenditures of the Department of Social and Rehabilitation Services for the tuition waiver program would be limited to no more than 30 percent of the amount of the total federal award. The current statute has no expenditure limitation. The bill would also require that the Department of Social and Rehabilitation Services approve the eligibility of each candidate.

The bill also would amend one of the eligibility criteria for the Workforce Development Loan Act by requiring that an individual seeking the foster care priority for receipt of loans be in the foster care system on his or her 18th birthday. The current statute allows the granting of

priority status if the individual is in the foster care system prior to his or her 18th birthday.

### **Out-district Tuition**

The bill would defer the third year of the four-year phase out of out-district tuition paid to community colleges and Washburn University from FY 2005 to FY 2006. Under the bill, out-district tuition charges would not be fully eliminated until FY 2007. The bill also would make technical changes.

### **Learning Quest Postsecondary Education Savings Program**

The bill would make changes to the statutes governing the Learning Quest postsecondary education savings accounts. HB 2795 would increase the maximum income tax deduction for contributions from \$2,000 to \$3,000 for individuals and from \$4,000 to \$6,000 for married couples filing jointly for each beneficiary beginning in tax year 2005. The bill also makes technical amendments to cross reference statutes in the Civil Code regarding garnishment.

### **Distribution of Postsecondary Aid for Technical Schools**

The bill would amend statutes governing the distribution of postsecondary aid for technical schools. Currently, 50.0 percent of the funding is distributed on November 1; 30.0 percent on March 1; and 20.0 percent on May 1. The bill would adjust the distribution so that equal distributions take place on August 1 and January 1.

### **Prohibition on Student and Employee Identification Numbers**

HB 2795 would prohibit postsecondary educational institutions from using a student's or employee's social security number on the individual's identification card or encoding the number in a magnetic strip or elsewhere on the card. The bill would also prohibit an individual's new identification number from being based on the person's social security number. The prohibition would become effective July 1,

2006.

### **Powers and Duties of Technical College Governing Boards**

HB 2795 would amend statutes relating to the establishment of separate governing boards for technical colleges. The bill would expand the list of powers and duties of those governing bodies to include:

- ! have custody of the property of the college and be responsible for the operation and management of the college;
- ! select a chair and officers of the governing body;
- ! sue and be sued;
- ! set the compensation of a president or chief administrative officer of the college;
- ! set the qualifications, duties, compensation, and other conditions of employment;
- ! enter into contracts;
- ! accept gifts, grants, and donations;
- ! acquire and dispose of real or personal property;
- ! enter into lease agreements;
- ! adopt rules and regulations necessary for administration of the college;
- ! contract with an agency for provision of academic or vocational education for the students of the college;
- ! appoint either the president of the college or the chair of the governing board as resident agent for the purpose of service of process; and
- ! take action not inconsistent with provisions of law.

### **Background**

HB 2795, as introduced, would amend the state's compulsory school attendance law to provide that children who are 16 or 17 years of age and enrolled concurrently in a high school and in a Regents' university, community college, technical college, vocational education school, or Washburn University would be exempt from those attendance requirements. The exemption would apply retroactively to persons who met those concurrent enrollment requirements from and after July 1, 1997, when the maximum compulsory school attendance age was increased from 16 to 18.

During the House Committee on Higher Education's hearing on the bill as introduced, testimony was provided by the Director of the Kaw Area Technical School. In that testimony, the Director informed the Committee that a recent federal audit report cited the school for noncompliance with federal law to the extent that some students at the school are under age 18 but have not graduated from high school or earned their General Equivalency Diploma (GED). Penalties for such noncompliance would be: suspension of the school's ability to award financial aid to postsecondary students; repayment of over \$882,000 in federal financial aid distributed during the 2002-2003 academic year; and additional audits to determine whether enrollment practices in prior academic years also were out of compliance with federal law. No opponents to the bill presented testimony at the House Committee's hearing.

The House Committee amended the bill to exempt from the compulsory attendance law only those students who are concurrently enrolled in a high school and in an institution of postsecondary education.

The Director of the Kaw Valley Technical School also testified to the Senate Education Committee in favor of the bill. There were no opponents to the bill appearing before the Committee.

The Senate Committee amended the bill to include a definition of "regularly enrolled" and to add the provisions of Substitute for HB 2493 which would enact the Kansas Private and Out-of-State Postsecondary Institutions Act. The Senate Committee's amendments to Substitute for HB 2493 prior to its inclusion in HB 2795 included the substitution of the term "out-of-state" for "foreign" throughout the bill, as well as technical amendments.

The Senate Committee further amended the bill to include amendments to the statutes governing the tuition waiver for children in the foster care system and to the statutes governing Learning Quest postsecondary education savings accounts. In addition, the committee amendments would delay the third year of the phase out of community college and Washburn University out-district tuition. Currently, when a student who is a resident of a county that does not have a community college or municipal university attends one of those institutions, the home county is required to pay out-district tuition to that institution. The Higher Education Coordination Act (1999 SB 345) eliminated this out-district charge over a four-year period beginning in FY 2001 with the



state providing replacement funds to cover the revenue lost by the institution. Due to fiscal restraints, only the first two years of the state funding increases were implemented.

The Senate Committee of the Whole amended the bill to adjust the distribution of postsecondary aid for technical schools and make technical amendments. The Committee of the Whole also added the provisions of SB 540 which pertained to certain prohibitions on student and employee identification numbers and to add the provisions of SB 314 which amended statutes relating to the powers and duties of the governing boards of technical colleges.

The Division of the Budget's fiscal note for the bill as introduced states that enactment of the bill would have no fiscal effect. There was no revised fiscal note available when this supplemental note was produced.